United States Court of Appeals

for the Second Circuit

APPENDIX

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77-7240

United States Court of Appeals
For The Second Circuit

UNITED STATES COURT OF APPEALS
FILED
JUN 1 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ROBERT PRATHER,

Plaintiff-Appellant,

against

AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA and JOHN J. SCANLON,

Defendants-Respondents.

B P/S

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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DOCKET
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PLAINTIFFS	DEFENDANTS
PRATHER, Robert	AVIS INC. RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT ROBERT W. HAACK, WILLIAM W. LYON, ROBERT O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN JR. ALVA T. BONDA AND JAMES J.SCANLON

§27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa, 28 USC.§§1331, (a) & 1337 and §14(a) of said Act. 15 USC §78n(a). Plaintiff seeks relief with regard to holding of the annual meeting of Avis stockholders and/or voting shares of Avis common at said meeting and/or the implementation of any resolutions voted at said meeting because of material misrepresentations and ommissi in the proxy statement of said meeting.

ag

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UNITED STATES DISTRICT COURT DOCKET

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DOCKET

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H77-222 PRAT[illegible] VS AVIND INC ET AL

DATE 1977	NR.	PROCEEDINGS
5-18	1.	Complaint filed.
	2.	ORDER TO SHOW CAUSE, & Affidavit of Robert Prather, Blumenfeld J m 5/19/77 (Hearing on 5/23/77)
	3.	Motion for Appointment of Person to Serve Process (James Pettit and/or David Brauser). Ordered Accordingly, Markowski,C. m 5/19/77. Summons issued and together with same and attested copies of OSC, motion for service, and copies of complaint handed to Atty Ribicof to have service made on Avis, Inc and Trustee R. J. Smith. only.
	4.	Civil cover sheet filed.
5-19		END. on O.S.C. "This order as submitted was improvidently grante without notice at hearing from the defendants, Accordingly having now heard the objection of Avis, Inc. by telephonic communication and finding it to be sound, the order is motified by striking out clause (ii). Blumenfeld J. m5/19/77. Copies to counsel
5-23	5	Memorandum of Avis Inc. in Opposition to Motions for Preliminary Injunction
"	6	Plaintiff's Memorandum in Suuport of Motion for Preliminary Injunctive Relief.
"	7	Amended Complaint filed.
"	8	Affidavit of John J Scanlon filed.
"	9	Affidavit of John P. McEnroe and Exhibit A fulid
"	10	Affidavit of Eli Shapiro.
"	11	Affidavit of James Pettit and David Brauser with return of service on Avis and Trustee Richard Joyce Smith.(on 5/19/77)
5-23		HEARING on Motion for Prelim. Injunction. DENIED Motion to Stay Denied, with leave to renew in Circuit Court.
"	12	Affidavit of Robert Prather filed.
	13	Motion for Admission of Out of State Counsel For Purposes of this ca
	14	Plaintiff's Reply Memorandum in Support of mo. for prel. injuntion.
5-25	15	Notice of Appeal filed. Copies to counsel. Attested copies of notice and copies of docket entries mailed to New Haven and the U.S. Court of Appeals. Civil Management Plan & Forms C & D mailed to Atty Ribic
5-24		Transcript of Hearing held on 5/23/77 filed.Collard,R.

I hereby certify that the foregoing is a true copy of the original document on file. Date: 5/25/77

SYLVESTER A. MARKOWSKI
Clerk

By: [illegible]
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff,	:	Before The Honorable M. Joseph Blumenfeld, D.J.
-against-	:	
AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	:	AMENDED COMPLAINT

Plaintiff, complaining of defendants, alleges on information and belief, except as to paragraphs 1, 2, 3, 4, and 5, as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue of this Court are founded on Section 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78aa, 28 U.S.C. §§ 1331(a) and 1337, and principles of pendent jurisdiction. Acts and transactions complained of herein have occurred in this District.

2. Plaintiff brings this action under and pursuant to Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), the Rules promulgated by the Securities and Exchange Commission (the "SEC") thereunder.

3. In connection with the acts, conducts and transactions hereinafter alleged, defendants directly and indirectly used the means and instrumentalities of Interstate commerce and the mails.

THE PARTIES

4. Plaintiff Robert Prather is the owner and holder of common stock of defendant Avis, Inc. since June 22, 1972.

5. Defendant Avis, Inc. ("Avis") is and at all relevant times has been a publicly owned corporation whose common stock is registered with the SEC pursuant to the Exchange Act and is listed and traded on the New York Stock Exchange. Approximately 7,893,504 shares of Avis common stock are presently issued and outstanding.

6. Defendant Richard Joyce Smith (the "Trustee") holds as Trustee, pursuant to an Order of this Court in United States v. International Telephone & Telegraph, et al., Civil No. 13,320, approximately 47% of the outstanding shares of common stock of Avis (the "Trust Property"). The Trustee is a director of Avis and a member of the New York law firm of Whitman & Ransom, which serves as his counsel.

7. Defendants Drummond C. Bell, Rodney C. Gott, Robert W. Haack, William W. Lyon, Robert C. O'Brien ("O'Brien"), Eli Shapiro, Olcott D. Smith, William E. Fruhan, Jr., Alva T. Bonda and John J. Scanlon are directors of Avis. These defendants, along with the Trustee, are candidates for reelection as directors at the Annual Meeting of Stockholders of Avis (the "Annual Meeting"), presently scheduled for May 25, 1977. Defendant O'Brien is a member of Whitman & Ransom.

THE PROXY STATEMENT

8. On or about May 4, 1977, Avis mailed to its stockholders a Notice of Annual Meeting of Stockholders (the "No-

tice") dated May 4, 1977, accompanied by a Proxy Statement dated May 4, 1977. The Notice stated that the Annual Meeting would be held on May 25, 1977 for the following purposes:

> "(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have beeen elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;
>
> "(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;
>
> "(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;
>
> "(4) To elect Arthur Andersen & Co. independent auditors of the Company for the year 1977; and
>
> "(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof."

9. The Proxy Statement was and is false and misleading in that it misrepresents and omits the following material facts as to which there is a substantial likelihood that a reasonable stockholder of Avis would consider important in deciding how to vote on the proposals to be submitted to the stockholders of Avis at the Annual Meeting.

10. On May 17, 1977, Avis registered a proposed secondary offering of two million shares of its common stock with the Securities and Exchange Commission ("SEC"). The selling shareholder is to be the Trustee.

11. The proposed secondary offering will reduce the percentage of Avis common stock held by the Trustee from approximately 47% to approximately 22%.

12. The Proxy Statement fails to disclose the registration of the proposed secondary offering by the Trustee or the incipiency of such offering.

13. As the Proxy Statement is dated May 4, 1977, the omission of a reference to the proposed secondary offfering was a willful attempt by defendants to conceal this material fact from the stockholders in soliciting proxies.

14. The omission of a reference to the proposed secondary offering is material because the effect of proposals (1), (2), and (3) to be submitted to the stockholders (par. 8 supra) will be to perpetuate control of the board of directors and management of Avis by the Trustee for a period of at least two years. There is a substantial likelihood that a reasonable stockholder of Avis in deciding how to vote on proposals (1), (2), and (3) would consider important the fact that a proposed secondary offering has been registered in which the Trustee would sell approximately one-half of the shares held by him.

15. The Proxy Statement states that "The Company has been advised by the Trustee that he currently intends to dispose of the remaining common stock of the Company held by him ... by

means of additional public offerings from time to time." In view of the registration of the proposed secondary offering and imminent sale by the Trustee of approximately half of his stock, this statement is false and misleading.

16. On or about May 16, 1977, an offer to purchase the Trust Property was made by Fuqua Industries, Inc. ("Fuqua"). A letter dated May 16, 1977 from counsel to Fuqua directed to the Trustee stated that Fuqua intends to petition this Court for an order permitting the Trustee to sell the Trust Property to Fuqua for cash at a price of $15.50 a share. Copies of this letter were directed to the other individual defendants. It is Fuqua's present intention, if permitted to purchase the Trust Property, promptly thereafter to propose a tax-free transaction to the remaining Avis stockholders at a price per share for their shares at least equivalent to the price per share paid for the Trust Property.

17. The Proxy Statement states with regard to proposals (2) and (3) in paragraph 8, supra, that:

> "...the proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

18. The Proxy Statement must therefore be updated to inform the stockholders of Avis of the Fuqua offer in order to make the statements therein not false and misleading.

19. The Proxy Statement fails to disclose the interest of the Trustee and O'Brien in discouraging offers to purchase the Trust Property. The effect of the adoption of proposals (2) and (3) (paragraph 8, supra) will be to discourage offers by third parties to purchase the Trust Property, since if proposals (2) and (3) are adopted, any purchaser will be unable to assert management control over Avis for a substantial period of time. Thus, in the letter to the Trustee dated May 16, 1977, described in paragraph 10, supra, Fuqua stated that should proposals (2) and (3) be adopted, Fuqua would not be interested in purchasing the Trust Property.

20. The compensation received by the Trustee is not disclosed in the Proxy Statement. The amount of such compensation is material in order that the stockholders may properly evaluate the interest of the Trustee and the directors in discouraging offers by third parties to purchase the Trust Property.

21. The Trustee and defendant O'Brien are members of the law firm of Whitman & Ransom, which is counsel to the Trustee. Said firm has received substantial fees for such representation. The fact of Whitman & Ransom's representation of the Trustee and the amount of its fees are material in order that the stockholders of Avis may properly evaluate the interest of the Trustee, O'Brien, and the other directors in discouraging offers by third parties to purchase the Trust Property and thereby deprive Whitman & Ransom of its role as counsel to the Trustee.

22. With regard to proposals (2) and (3), the Proxy Statement states:

> "The Board of Directors believes that, with the Board consisting at present almost entirely of persons who are not officers or employees of the Company, it is unlikely that the amendments would result in perpetuation of the Company's present officers under circumstances detrimental to the stockholders, although stockholders should consider that the Board's determination with respect to takeover bids might be influenced by directors' self-interest in remaining directors of the Company.
>
> "The Board of Directors has concluded that the potential benefits of the proposed amendments outweigh any possible disadvantages thereof and the Board of Directors unanimously recommends approval of the proposals described below."

However, the Proxy Statement does not disclose that the Trustee, as holder of 47% of the common stock of Avis, effectively controls the Board of Directors. As discussed above (paragraph 13) one effect of the adoption of proposals (2) and (3) will be to discourage offers to purchase the Trust Property, thereby continuing defendant Richard Joyce Smith and Whitman & Ransom in their roles as Trustee and counsel to the Trustee, respectively. Said omission renders the above quoted statement materially false and misleading.

23. With regard to proposals (2) and (3), the Proxy Statement further states that "These proposals could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders." In fact, changes in management and in particular Fuqua's offer to purchase the Trust Property will be deterred by adoption of pro-

posals (2) and (3) (paragraph 19, supra). The above quoted statement is therefore false and misleading.

24. With regard to proposals (2) and (3), the Proxy Statement further states that "Tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged ..." In fact, tender offers or other acquisitions and in particular Fuqua's offer to purchase the Trust Property will be discouraged by adoption of proposals (2) and (3) (paragraph 19, supra). The above quoted statement is therefore false and misleading.

25. With regard to proposal (3), the Proxy Statement states that "The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock....The proposed amendment would make it more difficult to effect such a transaction and might therefore discourage an attempt to do so." In fact, tender offers or takeover bids and in particular Fuqua's offer to purchase the Trust Property will be discouraged by adoption of proposal (3). The above quoted statement is therefore false and misleading.

26. The aforesaid violations of Section 14-a of the Exchange Act and the Rules promulgated thereunder render all proxies solicited by Avis illegal and void and Avis should be enjoined from voting them, and, unless so enjoined, plaintiff and the stockholders of Avis will sustain irreparable injury in that election of directors will take place and amendments

in that election of directors will take place and amendments to the by-laws will be adopted based on misrepresentations and omissions in the Proxy Statement.

27. Plaintiff has no adequate remedy at law.

28. In the event the Annual Meeting is held, the results of said meeting should be set aside by this Court for all of the reasons hereinabove set forth.

WHEREFORE, plaintiff demands judgment:

(1) Enjoining defendant Richard Joyce Smith as Trustee, and defendant Avis from (i) voting any shares of Avis common stock at the forthcoming Annual Meeting of Avis stockholders, and (ii) soliciting any proxies with respect thereto;

(2) Enjoining Avis from holding the forthcoming Annual Meeting of its stockholders scheduled to take place on May 25, 1977 until the material misrepresentations and omissions in the proxy statement for said meeting are corrected;

(3) In the alternative, declaring illegal and void and setting aside the voting of proxies by Avis at the Annual Meeting and enjoining defendants from taking any action to implement or carry out any resolution or decisions authorized or voted upon at said Annual Meeting; and

(4) Granting such other and further relief as to the Court may seem just and proper.

RIBICOFF & KOTKIN

By_____
A Member of the Firm
Attorneys for Plaintiff
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(203) 527-0781

Of Counsel:

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330 Madison Avenue
New York, New York 10017
(212) 661-3200

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

ROBERT PRATHER, Plaintiff, -against- AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	Before The Honorable M. Joseph Blumenfeld, D.J. ORDER TO SHOW CAUSE

Upon the annexed affidavit of Robert Prather, sworn to May 18, 1977, and the complaint, and sufficient cause appearing therefor, it is

ORDERED, that defendants herein, and each of them, or their respective attorneys, show cause before this Court on the 23rd day of May, 1977 at 11:30 A.M., or as soon thereafter as counsel can be heard in North Courtroom of the United States Courthouse, Hartford, Connecticut, why an order should not be made and entered herein:

(1) Enjoining defendant Richard Joyce Smith as Trustee pursuant to an Order of this Court dated January 6, 1975 (the "Trustee") and defendant Avis, Inc. ("Avis") from (i) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders, and (ii) soliciting any proxies with respect thereto;

(2) Enjoining Avis from holding the forthcoming annual meeting of its stockholders scheduled to take place on May 25, 1977 until the material misrepresentations and omissions in the proxy statement for said meeting are corrected;

(3) Granting such other and further relief as to the Court may seem just and proper; and it is further

ORDERED, that pending the hearing and determination of the within motion, the Trustee and Avis be, and the same hereby are, enjoined from (i) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders; (ii) soliciting any proxies with respect thereto; and (iii) holding the forthcoming annual meeting of Avis stockholders; and it is further

ORDERED, that service of a copy of this Order to Show Cause and supporting papers upon Avis and the Trustee on or before the 19th day of May, 1977 at 11:00 A.M. shall be deemed good and sufficient.

Dated: Hartford, Connecticut
May 18, 1977.

12:43 P.M.

M. Joseph Blumenfeld
U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff,	:	Before The Honorable M. Joseph Blumenfeld, D.J.
-against-	:	
AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	:	AFFIDAVIT

STATE OF CONNECTICUT)
: ss.: Hartford
COUNTY OF HARTFORD)

ROBERT PRATHER, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and make this affidavit in support of my motion brought on by Order To Show Cause, for an order:

(a) Enjoining defendant Richard Joyce Smith as Trustee pursuant to an Order of this Court dated January 6, 1975 (the "Trustee") and defendant Avis, Inc. ("Avis") from (i) voting any shares of Avis common stock at the forthcoming annual meeting of Avis stockholders, and (ii) soliciting any proxies with respect thereto;

(b) Enjoining Avis from holding the forthcoming annual meeting of its stockholders scheduled to take place on May 25, 1977 until the material misrepresentations and omissions in the proxy statement for said meeting are corrected; and

(c) Granting such other and further relief as to the Court may seem just and proper.

2. I am the owner and holder of common stock of defendant Avis since June 22, 1972.

3. On or about May 4, 1977, I received a Notice of Annual Meeting of Stockholders of Avis (the "Notice") dated May 4, 1977, accompanied by a Proxy Statement dated May 4, 1977. The Notice stated that the Annual Meeting would be held on May 25, 1977 for the following purposes:

> "(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have beeen elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;
>
> "(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;
>
> "(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;
>
> "(4) To elect Arthur Andersen & Co. independent auditors of the Company for the year 1977; and
>
> "(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof."

4. On information and belief, the Proxy Statement was and is false and misleading in that it misrepresents and omits the following material facts as to which there is a substantial likelihood that a reasonable stockholder of Avis would consider important in deciding how to vote on the proposals to be submitted to the stockholders of Avis at the Annual Meeting.

5. On information and belief, on or about May 16, 1977, an offer to purchase the Trust Property was made by Fuqua Industries, Inc. ("Fuqua"). A letter dated May 16, 1977 from counsel to Fuqua directed to the Trustee stated that Fuqua intends to petition this Court for an order permitting the Trustee to sell the Trust Property to Fuqua for cash at a price of $15.50 a share. Copies of this letter were directed to the other individual defendants. It is Fuqua's present intention, if permitted to purchase the Trust Property, promptly thereafter to propose a tax-free transaction to the remaining Avis stockholders at a price per share for their shares at least equivalent to the price per share paid for the Trust Property.

6. The Proxy Statement states with regard to proposals (2) and (3) in paragraph 3, supra, that:

> "...the proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

7. The Proxy Statement must therefore be updated to inform the stockholders of Avis of the Fuqua offer in order to

make the statements therein not false and misleading.

8. The Proxy Statement fails to disclose the interest of the Trustee and defendant Robert C. O'Brien ("O'Brien") in discouraging offers to purchase the Trust Property. The effect of the adoption of proposals (2) and (3) (paragraph 3, supra) will be to discourage offers by third parties to purchase the Trust Property, since if proposals (2) and (3) are adopted, any purchaser will be unable to assert management control over Avis for a substantial period of time. Thus, in the letter to the Trustee dated May 16, 1977, described in paragraph 5, supra, Fuqua stated that should proposals (2) and (3) be adopted, Fuqua would not be interested in purchasing the Trust Property.

9. The compensation received by the Trustee is not disclosed in the Proxy Statement. The amount of such compensation is material in order that the stockholders may properly evaluate the interest of the Trustee and the directors in discouraging offers by third parties to purchase the Trust Property.

10. The Trustee and defendant O'Brien are members of the law firm of Whitman & Ransom, which is counsel to the Trustee. On information and belief, said firm has received substantial fees for such representation. The fact of Whitman & Ransom's representation of the Trustee and the amount of its fees are material in order that the stockholders of Avis may properly evaluate the interest of the Trustee, O'Brien, and the other directors in discouraging offers by third parties to purchase the Trust Property and thereby deprive Whitman & Ransom of its role as counsel to the Trustee.

11. With regard to proposals (2) and (3), the Proxy Statement states:

> "The Board of Directors believes that, with the Board consisting at present almost entirely of persons who are not officers or employees of the Company, it is unlikely that the amendments would result in perpetuation of the Company's present officers under circumstances detrimental to the stockholders, although stockholders should consider that the Board's determination with respect to takeover bids might be influenced by directors' self-interest in remaining directors of the Company.
>
> "The Board of Directors has concluded that the potential benefits of the proposed amendments outweigh any possible disadvantages thereof and the Board of Directors unanimously recommends approval of the proposals described below."

However, the Proxy Statement does not disclose that the Trustee, as holder of 47% of the common stock of Avis, effectively controls the Board of Directors. As discussed above (paragraph 8) one effect of the adoption of proposals (2) and (3) will be to discourage offers to purchase the Trust Property, thereby continuing defendant Richard Joyce Smith and Whitman & Ransom in their roles as Trustee and counsel to the Trustee, respectively. Said omission renders the above quoted statement materially false and misleading.

12. With regard to proposals (2) and (3), the Proxy Statement further states that "These proposals could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders." In fact, changes in management and in particular Fuqua's offer to purchase the Trust Property will be deterred by adoption of proposals (2) and (3) (paragraph 8, supra). The above quoted statement is therefore false and misleading.

13. With regard to proposals (2) and (3), the Proxy Statement further states that "Tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged ..." In fact, tender offers or other acquisitions and in particular Fuqua's offer to purchase the Trust Property will be discouraged by adoption of proposals (2) and (3) (paragraph 8, supra). The above quoted statement is therefore false and misleading.

14. With regard to proposal (3), the Proxy Statement states that "The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock....The proposed amendment would make it more difficult to effect such a transaction and might therefore discourage an attempt to do so." In fact, tender offers or takeover bids and in particular Fuqua's offer to purchase the Trust Property will be discouraged by adoption of proposal (3). The above quoted statement is therefore false and misleading.

15. The aforesaid violations of Section 14-a of the Exchange Act and the Rules promulgated thereunder render all proxies solicited by Avis illegal and void and Avis should be enjoined from voting them, and, unless so enjoined, plaintiff and the stockholders of Avis will sustain irreparable injury in that election of directors will take place and amendments to the by-laws will be adopted based on misrepresentations and omissions in the Proxy Statement.

16. Plaintiff has no adequate remedy at law.

17. No prior application has been made to this or any other Court for relief similar to that sought herein.

WHEREFORE, it is respectfully requested that the present motion be granted in all respects.

ROBERT PRATHER

Sworn to before me this
18th day of May, 1977.

June S. Breen
Notary Public

JUNE S. BREEN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff,	:	Before The Honorable M. Joseph Blumenfeld, D.J.
-against-	:	
AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. PRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	:	COMPLAINT

Plaintiff, complaining of defendants, alleges on information and belief, except as to paragraphs 1, 2, 3, 4, and 5, as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue of this Court are founded on Section 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78aa, 28 U.S.C. §§ 1331(a) and 1337, and principles of pendent jurisdiction. Acts and transactions complained of herein have occurred in this District.

2. Plaintiff brings this action under and pursuant to Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), the Rules promulgated by the Securities and Exchange Commission (the "SEC") thereunder, and applicable principles of state law.

3. In connection with the acts, conducts and transactions hereinafter alleged, defendants directly and indirectly used the means and instrumentalities of interstate commerce and the mails.

THE PARTIES

4. Plaintiff Robert Prather is the owner and holder of common stock of defendant Avis, Inc. since June 22, 1972.

5. Defendant Avis, Inc. ("Avis") is and at all relevant times has been a publicly owned corporation whose common stock is registered with the SEC pursuant to the Exchange Act and is listed and traded on the New York Stock Exchange. Approximately 7,893,504 shares of Avis common stock are presently issued and outstanding.

6. Defendant Richard Joyce Smith (the "Trustee") holds as Trustee, pursuant to an Order of this Court in United States v. International Telephone & Telegraph, et al., Civil No. 13,320, approximately 47% of the outstanding shares of common stock of Avis (the "Trust Property"). The Trustee is a director of Avis and a member of the New York law firm of Whitman & Ransom, which serves as his counsel.

7. Defendants Drummond C. Bell, Rodney C. Gott, Robert W. Haack, William W. Lyon, Robert C. O'Brien ("O'Brien"), Eli Shapiro, Olcott D. Smith, William E. Fruhan, Jr., Alva T. Bonda and John J. Scanlon are directors of Avis. These defendants are candidates for reelection as directors at the Annual Meeting of Stockholders of Avis (the "Annual Meeting"), presently scheduled for May 25, 1977. Defendant O'Brien is a member of Whitman & Ransom.

THE PROXY STATEMENT

8. On or about May 4, 1977, Avis mailed to its stockholders a Notice of Annual Meeting of Stockholders (the "No-

tice") dated May 4, 1977, accompanied by a Proxy Statement dated May 4, 1977. The Notice stated that the Annual Meeting would be held on May 25, 1977 for the following purposes:

> "(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have beeen elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;
>
> "(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;
>
> "(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;
>
> "(4) To elect Arthur Andersen & Co. independent auditors of the Company for the year 1977; and
>
> "(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof."

9. The Proxy Statement was and is false and misleading in that it misrepresents and omits the following material facts as to which there is a substantial likelihood that a reasonable stockholder of Avis would consider important in deciding how to vote on the proposals to be submitted to the stockholders of Avis at the Annual Meeting.

10. On or about May 16, 1977, an offer to purchase the Trust Property was made by Fuqua Industries, Inc. ("Fuqua"). A letter dated May 16, 1977 from counsel to Fuqua directed to the Trustee stated that Fuqua intends to petition this Court for an order permitting the Trustee to sell the Trust Property to Fuqua for cash at a price of $15.50 a share. Copies of this letter were directed to the other individual defendants. It is Fuqua's present intention, if permitted to purchase the Trust Property, promptly thereafter to propose a tax-free transaction to the remaining Avis stockholders at a price per share for their shares at least equivalent to the price per share paid for the Trust Property.

11. The Proxy Statement states with regard to proposals (2) and (3) in paragraph 8, supra, that:

> "...the proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments."

12. The Proxy Statement must therefore be updated to inform the stockholders of Avis of the Fuqua offer in order to make the statements therein not false and misleading.

13. The Proxy Statement fails to disclose the interest of the Trustee and O'Brien in discouraging offers to purchase the Trust Property. The effect of the adoption of proposals (2) and (3) (paragraph 8, supra) will be to discourage offers by third parties to purchase the Trust Property, since if pro-

posals (2) and (3) are adopted, any purchaser will be unable to assert management control over Avis for a substantial period of time. Thus, in the letter to the Trustee dated May 16, 1977, described in paragraph 10, supra, Fuqua stated that should proposals (2) and (3) be adopted, Fuqua would not be interested in purchasing the Trust Property.

14. The compensation received by the Trustee is not disclosed in the Proxy Statement. The amount of such compensation is material in order that the stockholders may properly evaluate the interest of the Trustee and the directors in discouraging offers by third parties to purchase the Trust Property.

15. The Trustee and defendant O'Brien are members of the law firm of Whitman & Ransom, which is counsel to the Trustee. Said firm has received substantial fees for such representation. The fact of Whitman & Ransom's representation of the Trustee and the amount of its fees are material in order that the stockholders of Avis may properly evaluate the interest of the Trustee, O'Brien, and the other directors in discouraging offers by third parties to purchase the Trust Property and thereby deprive Whitman & Ransom of its role as counsel to the Trustee.

16. With regard to proposals (2) and (3), the Proxy Statement states:

> "The Board of Directors believes that, with the Board consisting at present almost entirely of persons who are not officers or employees of the Company, it is unlikely that the amendments would result in perpetuation of the Company's present officers under

> circumstances detrimental to the stockholders, although stockholders should consider that the Board's determination with respect to takeover bids might be influenced by directors' self-interest in remaining directors of the Company.
>
> "The Board of Directors has concluded that the potential benefits of the proposed amendments outweigh any possible disadvantages thereof and the Board of Directors unanimously recommends approval of the proposals described below."

However, the Proxy Statement does not disclose that the Trustee, as holder of 47% of the common stock of Avis, effectively controls the Board of Directors. As discussed above (paragraph 13) one effect of the adoption of proposals (2) and (3) will be to discourage offers to purchase the Trust Property, thereby continuing defendant Richard Joyce Smith and Whitman & Ransom in their roles as Trustee and counsel to the Trustee, respectively. Said omission renders the above quoted statement materially false and misleading.

17. With regard to proposals (2) and (3), the Proxy Statement further states that "These proposals could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders." In fact, changes in management and in particular Fuqua's offer to purchase the Trust Property will be deterred by adoption of proposals (2) and (3) (paragraph 13, supra). The above quoted statement is therefore false and misleading.

18. With regard to proposals (2) and (3), the Proxy Statement further states that "Tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged ..." In fact, tender

offers or other acquisitions and in particular Fuqua's offer to purchase the Trust Property will be discouraged by adoption of proposals (2) and (3) (paragraph 13, supra). The above quoted statement is therefore false and misleading.

19. With regard to proposal (3), the Proxy Statement states that "The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock....The proposed amendment would make it more difficult to effect such a transaction and might therefore discourage an attempt to do so." In fact, tender offers or takeover bids and in particular Fuqua's offer to purchase the Trust Prop[illegible] will be discouraged by adoption of proposal (3). The above quoted statement is therefore false and misleading.

20. The aforesaid violations of Section 14-a of the Exchange Act and the Rules promulgated thereunder render all proxies solicited by Avis illegal and void and Avis should be enjoined from voting them, and, unless so enjoined, plaintiff and the stockholders of Avis will sustain irreparable injury in that election of directors will take place and amendments to the by-laws will be adopted based on misrepresentations and omissions in the Proxy Statement.

21. Plaintiff has no adequate remedy at law.

22. In the event the Annual Meeting is held, the results of said meeting should be set aside by this Court for all of the reasons hereinabove set forth.

WHEREFORE, plaintiff demands judgment:

(1) Enjoining defendant Richard Joyce Smith as Trustee, and defendant Avis from (i) voting any shares of Avis common stock at the forthcoming Annual Meeting of Avis stockholders, and (ii) soliciting any proxies with respect thereto;

(2) Enjoining Avis from holding the forthcoming Annual Meeting of its stockholders scheduled to take place on May 25, 1977 until the material misrepresentations and omissions in the proxy statement for said meeting are corrected;

(3) In the alternative, declaring illegal and void and setting aside the voting of proxies by Avis at the Annual Meeting and enjoining defendants from taking any action to implement or carry out any resolution or decisions authorized or voted upon at said Annual Meeting; and

(4) Granting such other and further relief as to the Court may seem just and proper.

RIBICOFF & KOTKIN

By Irving S. Ribicoff
A Member of the Firm
Attorneys for Plaintiff
799 Main Street
Hartford, Connecticut 06103
(203) 527-0781

Of Counsel:

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New York, New York 10017
(212) 661-3200

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff,	:	Before The Honorable M. Joseph Blumenfeld, D.J.
-against-	:	
AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	:	AFFIDAVIT

STATE OF CONNECTICUT)
: ss.: Hartford
COUNTY OF HARTFORD)

ROBERT PRATHER, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and make this affidavit in support of my motion brought on by Order To Show Cause, and to reply to the various affidavits submitted in opposition to my motion.

2. Although the Proxy Statement of Avis, Inc. ("Avis") is dated May 4, 1977, I in fact did not receive a copy until May 12, 1977. Following receipt of the Proxy Statement and discovery of the material misrepresentations and omissions described in the amended complaint herein, my attorneys promptly prepared the necessary papers and initiated this action by presentation of an Order To Show Cause to this Court on May 18, 1977. There was

thus no delay in bringing the serious misrepresentations and omissions which are the subject of this action to the attention of this Court.

3. On information and belief, Avis has mailed a Supplement to Proxy Statement (the "Supplement") to Avis shareholders. I respectfully submit that the fact that defendants herein have seen fit to include virtually all of the misrepresentations and omissions which are the subject of this action in the Supplement confirms my allegations that the initial Proxy Statement herein was false and misleading.

4. The alleged mailing of the Supplement on the eve of the scheduled annual meeting cannot cure the defects in the proxy materials. As of May 20, 1977, I had not received the Supplement at my record address as an Avis stockholder.

5. Even assuming an Avis stockholder received the Supplement at his own address prior to the scheduled date of the Annual Meeting, he would have no opportunity to evaluate the material contained therein and revoke any earlier proxy absent actual attendance at the Annual Meeting.

6. Further, it would appear highly unlikely that in the case of the undoubtedly numerous Avis stockholders whose shares are held in street names that the Supplement would have arrived at their brokerage firm and be forwarded to them, prior to the Annual Meeting. These stockholders will not have seen the Supplement prior to the Annual Meeting.

7. Thus, I respectfully submit that the mailing of

the Supplement is an additional reason requiring the postponement of the Annual Meeting sought in the instant application.

WHEREFORE, it is respectfully requested that the present motion be granted in all respects.

ROBERT PRATHER

Sworn to before me this
day of May, 1977.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

ROBERT PRATHER,

Plaintiff,

-against-

AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON,

Defendants.

Civil Action No. 13,320

Before The Honorable M. Joseph Blumenfeld, D. J.

- x

AFFIDAVIT

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,

Defendants,

and

AVIS, INC.,

Defendant Intervenor.

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. SCANLON, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the application of Fuqua Industries, Inc. ("Fuqua") to intervene in this action and for other relief and in opposition to the application of Robert Prather to enjoin Avis from soliciting proxies and from holding its forthcoming annual meeting and for other relief.

2. Besides being a Director of Avis, I was Chairman of the Ad Hoc Committee which formulated and proposed the By-law amendments which are here challenged. I am also Chairman of the Finance Committee of Avis and was formerly Executive Vice President and Chief Financial Officer of AT&T until my retirement.

3. I was approached to become a member of the Board of Avis and agreed to become one before the appointment of the Trustee. I have no role in the management of Avis. Indeed, of the 12 Directors, only one, the President and Chief Executive Officer of the Company, Mr. Colin Marshall, is part of the management.

4. The reasons why the Ad Hoc Committee proposed the challenged amendments to the By-laws and the reasons why the Board of Directors recommended these amendments may be summarized as follows:

5. We recognized that as the Trustee continued to dispose of Avis' shares in the public market, and as the number of shares held by him decreased, the Company could become an increasingly attractive target for a takeover which might well be unfair to the public shareholders. No member of the Board has the slightest desire to oppose such a transaction at a fair and reasonable price.

6. But in our judgment, and in the judgment of the financial advisors to the Trustee, the market price of Avis stock has not been reflective of its intrinsic value.

7. Part of the reason for this low price was, in our judgment, the troubled history which the Company had undergone as it emerged from ITT ownership. The capital structure of the Company as it entered an era of independent ownership was overburdened with short-term debt, and the credit crunch during 1973 and 1974 had a severe negative impact upon the earnings of the Company.

8. In addition, there was the substantial overhang of unsold stock in the Trustee's hands which sooner or later was expected to be sold to the public and which tended to have a depressing impact upon the market value of the stock. As a consequence of these depressing influences the price earnings ratio of Avis, Inc. stock has been in the 6 to 7 range

while that for the Dow Jones average is between 9 and 10.

9. In the circumstances, and fully aware of the orders of this Court directing a public sale of all of the ITT stock, it seemed to the Ad Hoc Committee that until the completion of the Trustee's program of public sale and until the market absorbed that impact, it would be desirable for the Company and its stockholders to be afforded a degree of protection against an offer hinged upon the market price of the stock, which in our view might not be fair to the public stockholders.

10. In addition, it seemed desirable to the Board to provide time to the Board and to the stockholders to appraise any offer which might be made prior to the time when the depressing influences on the stock price for Avis had been dissapated and also time to give full consideration to all available offers.

11. The Ad Hoc Committee and the Board carefully considered the full range of By-law protections that have been adopted by other corporations. The Ad Hoc Committee recommended and the Board approved what we believed to be the minimum protections necessary during this transitional period. Throughout our discussions the Board focused on the unique circumstances of

this corporation which in our judgment made these protections necessary.

12. At no time was it ever suggested that a purpose of these proposals was to protect the existing management, or to protect the Trustee in any way, or to perpetuate control of any managerial group.

John J. Scanlon

Sworn to before me this
19th day of May, 1977.

Notary Public

ANTHONY M. RADICE
Notary Public, State of New York
No. 31-8470375
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff,	:	Civil Action No. 13,320
-against-	:	Before The Honorable M. Joseph Blumenfeld, D. J.
AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA, and JOHN J. SCANLON, Defendants.	:	
UNITED STATES OF AMERICA, Plaintiff,	:	AFFIDAVIT
-against-	:	
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants,	:	
and	:	
AVIS, INC., Defendant Intervenor.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELI SHAPIRO, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the application of Fuqua Industries, Inc. ("Fuqua") to intervene in this action and for other relief and in opposition to the application of Robert Prather to enjoin Avis from soliciting proxies and from holding its forthcoming annual meeting and for other relief.

2. I am a Director of Avis, Inc. I am Vice Chairman of the Travelers Insurance Company and Alfred P. Sloan Professor of Management at MIT. I am a former Chairman of the Finance Committee of Travelers.

3. The Board of Avis is an independent Board in every sense of the word. I have no role in the management of the Company and no stake in perpetuating it.

4. Nevertheless, I recognize, as the other members of the Board have recognized, that Avis has a vigorous, aggressive and effective management, which has achieved great success since Avis and its present independent Board was created. Avis' earnings have increased substantially, the value of its stock has increased substantially (from about $5 to $6 to $13 to $14 per share). The composition of Avis' debt structure has been substantially improved although the process is not yet complete. Dividends were foregone for a period in order to improve the

equity position of the Company. With the improved earnings, dividend payments have been resumed. And the Company is well on its way of becoming a strong independent force in the vehicle rental and leasing field.

5. In order to complete this program so as to bring to the public shareholders of Avis the full benefit of their investment and in order to protect the public shareholders from unfair takeovers which would deprive the shareholders of their equity, I joined with the other Directors in recommending the proposed By-law amendments.

7. The proposal recently received by the Trustee from Fuqua Industries illustrates the desirability, indeed the necessity, of these provisions.

8. Fuqua has offered $15.50 per share in cash to the Trustee for his 3,743,504 shares. Assuming acceptance of this offer, Fuqua proposed to offer unspecified securities for the 4,150,000 Avis shares held by the public at 12/31/76. Since Fuqua would control 47% of Avis' stock if the Trustee accepted Fuqua's cash offer, a favorable response from only 203,249 of the Avis shares presently held by the public would be enough to force all of Avis' public shareholders either (a) to exchange their shares for unspecified securities to a combined Avis-Fuqua entity, or (b) sell their Avis shares in the open market for cash.

9. A forced sale or exchange of their Avis stock would deny present Avis shareholders the opportunity to continue as equity holders in a firm which not only pays out a higher fraction of its earnings in dividends, but also has enjoyed a much faster rate of growth in earnings per share than Fuqua shares. For example, according to Fuqua's 1976 annual report, the total growth in earnings per share for Fuqua over the past 5 years and 9 years has been 38% and 36%, respectively. According to Avis' 1976 annual report, the growth in earnings per share for Avis over the past 5 years and 9 years has been 122% and 178%, respectively. In the first quarter of 1977, Fuqua's earnings per share increased to 37¢ from 32¢ in the same quarter of the prior year. Over this same period, Avis' earnings per share increased from 12¢ to 38¢.

10. In short, acceptance of the Fuqua offer by the Trustee may inevitably lead the remainder of Avis' present shareholders group into an investment security which they did not vote to accept, and which might be significantly less attractive to them than their present Avis shares.

11. Moreover, a merger or change in control of Avis common stock can, as pointed out in the affidavit of Mr. Marshall, if not approved by Avis' lenders, result in an Event of Default. This could potentially result in the

acceleration of most of Avis' currently outstanding debt, with significant adverse consequences to Avis' public shareholders.

12. The wisdom of providing the protection for the Company and its stockholders which the proposed By-laws would afford is demonstrated by an analysis of the Fuqua order as compared to the course of conduct which the Trustee has proposed to carry out.

13. The Avis Trustee has proposed to sell 2,000,000 of his 3,743,504 shares in a registered public offering in June 1977. Market conditions permitting, it is probable that he will offer the balance of his shares within a year thereafter. Assuming for a moment that the court would permit the Trustee to sell the Avis shares with the sole objective of maximizing the value of these shares, would the sale today of all of the Trustee's 3,743,504 shares at $15.50 be attractive?

14. Avis' stock closed at $14.00 per share on May 17, the day the registration statement was filed. Fuqua has offered a $1.50 per share premium over this price. Assume that the Trustee can realize $14.00 per share. Assume further, that a 10% return could be earned on the proceeds from any sale of stock today, what share price would have to be realized by the Trustee one year hence on the remaining 1,743,504 shares in

order to justify rejecting the Fuqua offer on purely economic grounds? It is simply (a) $15.50 per share, plus (b) 10% of $15.50 for the one-year delay, plus (c) $3,000,000 for the $1.50 per share of assumed greater proceeds foregone on the 2,000,000 shares sold at $14.00 rather than $15.50. This amounts to $18.77 per share.

15. Last year (1976), Avis earned $2.11 per share. This year (1977) security analysts have been projecting Avis' earnings per share at between $2.50 and $3.00. Earnings in the first three months of 1977 are already 26¢ ahead of last year. With this kind of earnings per share growth, it is not at all difficult to imagine a sale price exceeding $18.77 one year hence, since this is only 6.2 to 7.0 times the financial analysts earning per share projection. This being the case, the Trustee may forego little if any value on the shares sold in 1977, should he reject the Fuqua offer.

16. The anti-takeover provisions proposed in the Avis proxy statement were designed to offer Avis shareholders a measure of protection from precisely the kind of tender offer proposed by Fuqua. The opportunity for the Trustee to achieve a small premium over the May 17, 1977 market price (which may be realized absent the Fuqua offer anyway, as noted earlier) is no basis upon which to justify a potential squeeze-out of public shareholders. Indeed, the Trustee was offered similar buyout proposals two years ago at a price of between only $6.00 and $7.00 per share. Since that time Avis has made dramatic

progress as an independent public company. This progress as an independent public company should be allowed to continue as anticipated by the court's order to the Trustee dated January 14, 1976.

17. Finally, I submit that any delay in the annual meeting as a result of Fuqua's belated communication to the Trustee would be contrary to the best interests of Avis. Delay will encourage more similar offers designed to secure the advantage based upon the present market price of Avis stock, will subject Avis to speculative stories in financial journals and can only result in generating adverse publicity which will be deleterious to the public image of the Company. The Company has already suffered one suspension of trading as a result of the belated communication to the Trustee and I respectfully urge that the court should adhere to the provision of its earlier order under which the Trustee and the Company has been functioning looking to early complete public distribution of the ITT block of stock.

Eli Shapiro

Eli Shapiro

Sworn to before me this
19th day of May, 1977.

Anthony M. Radice

Notary Public

ANTHONY M. RADICE
Notary Public, State of New York
No. 31-6470578
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, -against- INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants. -and- AVIS, INC., Defendant-Intervenor.	Civil Action No. 13,320 Before The Honorable M. Joseph Blumenfeld, D.J. AFFIDAVIT
ROBERT PRATHER, Plaintiff, -against- AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA and JOHN J. SCANLON, Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN P. McENROE, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant-intervenor herein,

Avis, Inc. ("Avis"). I make this affidavit in opposition to the requests for preliminary injunctions made by Fuqua Industries, Inc. ("Fuqua") and Robert Prather ("Prather").

2. Prather, a vice-president of Fuqua and a record owner of one share of Avis common stock, seeks to enjoin the Avis stockholders' meeting scheduled for May 25, 1977 solely on the grounds that the Proxy Statement is misleading. He lists six (6) respects in which he alleges the Proxy Statement to be misleading.

3. His critical allegation - echoed by Fuqua - is that the Proxy Statement is misleading because it does not disclose the Fuqua offer to purchase Avis stock made late on May 17, 1977, some 13 days after the Proxy Statement was issued. Attached hereto as Exhibit A is a copy of a Supplement to Proxy Statement (the "Supplement") mailed on May 19, 1977 to all Avis stockholders of record on the record date for the Avis Annual Meeting. The Supplement, as required by the proxy rules, was submitted by Avis to the SEC for review prior to circulation. The SEC granted accelerated clearance of the Supplement so that Avis was able immediately to mail the Supplement to its stockholders. The Supplement clearly discloses the Fuqua offer.

4. Prather also alleges that the Proxy Statement fails to disclose the compensation received by the Trustee and by the law firm of Whitman & Ransom. The compensation received through December 31, 1976 of both the Trustee and Whitman & Ransom is disclosed in the Supplement despite Avis' belief that these matters are not material because the Trustee and Whitman & Ransom are paid by ITT after Court approval and not by Avis.

5. Prather alleges (¶16 of his complaint) that the Proxy Statement does not disclose that the Trustee, as holder of 47% of the common stock of Avis, effectively controls the Board of Directors. Nonetheless, the Proxy Statement repeatedly refers to the fact that the Trustee holds 47% of the common stock of Avis and states explicitly on page 3 thereof that "The Trustee currently may be deemed to 'control' the Company within the meaning of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended." Accordingly, Avis believes that the relationships between the Company and the Trustee are adequately disclosed through the information provided in the original Proxy Statement and so states in the Supplement.

6. Finally, Prather alleges in paragraphs 17, 18 and 19 of the complaint that the language in the Proxy Statement that proposals 2 and 3 "could deter a change in management," and "could...discourage," tender offers is misleading and should read "will deter" and "will discourage." These allegations are entirely misplaced. The statements as to the effect of proposals 2 and 3 at the time the statements were made could, at best, only be speculative. Avis could not and did not know for a certainty what effect the proposals would have on all possible suitors because it does not control them. Nor need all suitors be similarly motivated. Thus Avis could not properly say that these proposals will deter and will discourage. Fuqua has, however, indicated that it will not proceed with its proposed purchase of the Trustee's shares of Avis if proposals 2 and 3 are approved at the Annual Meeting and a statement to that effect has been inserted into the Supplement. Avis believes, and so states in the Supplement, that the Proxy Statement adequately discloses the likely effects of adoption of the proposals.

7. Accordingly, the disclosures sought by Prather have now been made in the Supplement and circulated to Avis stockholders prior to the Annual Meeting. Thus, when the stockholders meet on May 25, they will have had before them the information necessary to decide whether or not to approve the proposed amendments of Avis' Certificate of Incorporation and By-Laws.

John P. McEnroe

Sworn to before me this
20th day of May, 1977.

Jean M. Trotta
Notary Public

JEAN M. TROTTA
Notary Public, State of New York
No. 41-4605726
Qualified in Nassau County
Commission Expires March 30, 1979

AVIS, INC.
WORLD HEADQUARTERS
900 Old Country Road
Garden City, New York 11530

SUPPLEMENT TO PROXY STATEMENT
Dated May 4, 1977

ANNUAL MEETING OF STOCKHOLDERS
May 25, 1977

This supplement is to advise you of events subsequent to the mailing to stockholders of proxy material with respect to the Company's Annual Meeting of Stockholders to be held May 25, 1977.

Late on May 17, 1977, Richard Joyce Smith, as Trustee (the "Trustee") appointed by the United States District Court for the District of Connecticut (the "Court") pursuant to the terms of a consent decree entered in *United States of America* v. *International Telephone and Telegraph Corporation and The Hartford Fire Insurance Company and Avis, Inc.* (the "Action"), received an offer on behalf of Fuqua Industries, Inc. ("Fuqua"), pursuant to which Fuqua offered to purchase from the Trustee the 3,743,504 shares of the Common Stock of the Company held by him for a cash purchase price of $15.50 per share. The cash offer extends only to shares held by the Trustee. In a subsequent press release Fuqua stated that, if Fuqua should acquire the Trustee's shares, its intention is to propose to the other Avis stockholders a merger of Fuqua and Avis. In an affidavit filed with the Court, Fuqua's general counsel indicated that the transaction to be proposed to such stockholders would be tax-free and would involve consideration per share at least equivalent in value to that offered the Trustee. Fuqua's proposal to the Trustee stated that Fuqua would not be interested in purchasing the Trustee's shares should the stockholders of the Company approve at the Annual Meeting the amendments to the Company's Certificate of Incorporation and By-laws set forth in the Proxy Statement previously mailed to stockholders.

The Trustee advised Fuqua's representatives on May 18, 1977 that, by a previous order of the Court, he has been instructed to distribute the Avis Common Stock held by him through a series of public offerings continuing from time to time at such intervals and in such amounts as the Trustee and his financial advisors find to be appropriate and in the best interests of the Company and all of its stockholders; that the Company on May 17 filed with the Securities and Exchange Commission a Registration Statement relating to a proposed sale by the Trustee of 2,000,000 shares of the Common

Stock of Avis held by him in a public distribution now scheduled for some time in June 1977; and that, unless otherwise ordered by the Court, he intends to proceed with that proposed sale.

The Trustee further advised Fuqua that he will not request the Board of Directors of the Company to delay the forthcoming Annual Meeting of Stockholders and that, unless otherwise directed by the Court, he intends to vote his shares in favor of the proposed amendments, as stated in the proxy material previously furnished stockholders.

Fuqua has moved to intervene in the Action to seek an injunction against the Trustee and Avis barring them from voting any shares at the Annual Meeting of Stockholders and enjoining the holding of such meeting until further order of the Court. In addition, a stockholder of the Company has commenced an action in the Court seeking similar relief, alleging that the Proxy Statement mailed to stockholders in connection with the Annual Meeting of Stockholders contains material misrepresentations and omissions in that, among other things, it fails to describe the offer subsequently made by Fuqua to the Trustee, fails to disclose that such offer and a possible subsequent tax-free transaction between Fuqua and the public stockholders will be discouraged by the proposed amendments to the Company's Certificate of Incorporation and By-laws, fails to disclose that the Trustee, as holder of 47% of the outstanding Common Stock of the Company, effectively controls the Board of Directors, and fails to disclose the amount of fees being received by Mr. Smith as Trustee and by the law firm of Whitman & Ransom (of which Mr. Smith and Mr. Robert C. O'Brien, who is also a director of the Company, are partners) as counsel to the Trustee. On May 18, 1977 the Court issued orders to show cause in the proceeding to intervene and in the stockholder's action returnable at a hearing on Monday, May 23, 1977.

While it is impossible to predict the outcome of such hearing or whether the Fuqua offer may be amended or other offers will be forthcoming, the Company and the Trustee continue to believe that the amendments to the Company's Certificate of Incorporation and By-laws proposed in the original Proxy Statement are in the best interests of the Company and its stockholders and should be approved at the Annual Meeting. The Company and the Trustee intend to resist any efforts to postpone the meeting.

The Company believes that the Proxy Statement adequately discloses the likely effects of adoption of the proposals described therein and the existing relationships between the Trustee and the Company. The Company further believes that the amounts of fees received by the Trustee and his counsel are immaterial to consideration of the matters to be acted upon at the meeting. In view of the request in the Court papers that such information be made available, however, it is furnished herewith. All such fees have been paid by International Telephone and Telegraph Corporation after approval by the Court, and all are a matter of public record. For services as Trustee during the period from his appointment on January 6, 1975 through December 31, 1976 the Trustee received fees of $100,000, and Whitman & Ransom received fees of $220,000. In addition, Mr. Smith and Mr. O'Brien, as well as the other directors, receive fees from the Company for serving as directors and members of committees of the Board, as reflected in the Proxy Statement previously sent to stockholders, and Whitman & Ransom has been reimbursed by International Telephone and Telegraph Corporation for out-of-pocket disbursements aggregating less than $10,000.

Stockholders are urged to sign and return their proxy. The Board of Directors recommends that stockholders vote for the management nominees for election as directors, and for Items Nos. 2, 3 and 4 described in the Proxy Statement. For stockholders' convenience, another copy of the form of proxy is enclosed. Please note that stockholders may sign and return this form of proxy even if they have previously signed and returned another proxy. The last dated and signed proxy received will be used to determine a stockholder's vote. Stockholders are urged to return their executed proxy card immediately to ensure its being received in time to be counted. Any stockholder may revoke his proxy by giving written notice to the Secretary of the Company reasonably in advance of the meeting or by attending the meeting and personally voting his shares.

DAVID L. SCHAFFER
Secretary

Dated: May 19, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- -x

ROBERT PRATHER, :

Plaintiff, :

-against- :

AVIS, INC., RICHARD JOYCE SMITH, :
DRUMMOND C. BELL, RODNEY C. GOTT, Civil Action
ROBERT W. HAACK, WILLIAM W. LYON, : No. 13,320
ROBERT C. O'BRIEN, ELI SHAPIRO,
OLCOTT D. SMITH, WILLIAM E. : Before The Honorable
FRUHAN, JR., ALVA T. BONDA and M. Joseph Blumenfeld, D.J.
JOHN J. SCANLON, :

Defendants, :

- -x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

INTERNATIONAL TELEPHONE AND :
TELEGRAPH CORPORATION and THE
HARTFORD FIRE INSURANCE COMPANY, :

Defendants, :

-and- :

AVIS, INC., :

Defendant-Intervenor :

- -x

STATE OF CONNECTICUT)
) ss:
COUNTY OF HARTFORD)

Gilbert E. Matthews, being duly sworn, deposes and says:

I am a limited partner of Bear, Stearns & Co., investment

bankers, and annex hereto as Exhibit A our report of May 21, 1977 in connection with the above entitled matters and my personal qualifications as Exhibit B.

I wish to advise the Court of the following:

According to information received by telephone this morning from the manager of the Proxy Department of Bear, Stearns & Co,, Mr. William Carvey, the supplemental proxy material of Avis dated May 19, 1977 was received this morning (Monday, May 23, 1977) by a hand delivery from Irving Trust Company.

I am further informed that, upon receipt of this material, address labels for all stockholders for whom we hold stock were ordered and that the supplemental proxy will be mailed to the beneficial owners tomorrow.

I am also informed that the proxy material dated May 4, 1977 had not been received by May 11. It had to be specifically requested on that date by us and was not received until May 16, 1977. For the Court's information, I have been informed that Bear, Stearns & Co. holds 75,440 shares of Avis common stock for eighty-six beneficial owners.

Gilbert E. Matthews

Gilbert E. Matthews

Sworn to before me
this 23rd day of May, 1977.

June S. Preen

Notary Public

JUNE S. PREEN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH [illegible]

Bear, Stearns & Co.
Corporate Finance
55 Water Street
New York, N.Y. 10041
(212) 952-5000

BEAR STEARNS

Mathews Affidavit
52a

Report on Behalf of

FUQUA INDUSTRIES, INC.

May 21, 1977

INTRODUCTION AND SUMMARY

We have been asked to consider (a) the financial effects of the proposal by Fuqua Industries, Inc. ("Fuqua") to purchase for $15.50 per share the 3,753,504 common shares of Avis, Inc. ("Avis") beneficially owned by International Telephone and Telegraph Corporation ("ITT") and held by Richard Joyce Smith as Trustee (the "Trustee"), and (b) the financial effects of the amendments proposed in the Avis proxy dated May 4, 1977. In the first part of this report, we discuss the impact on the market value of the common stock of Avis of the proposed amendments to Avis' By-laws and Certificate of Incorporation. In the second portion of this report, we discuss the prospective financial effects of Fuqua's offer upon (1) the public shareholders of Avis, (2) ITT, and (3) Avis itself.

In our judgment, the proposed amendments which would substantially discourage potential acquirers, would have an adverse impact on the market price of the Avis shares.

In our judgment, the acceptance of the Fuqua offer by the Trustee would not be detrimental to the public shareholders of Avis, to ITT, or to Avis.

FINANCIAL IMPLICATIONS OF THE AMENDMENTS
PROPOSED IN AVIS' PROXY DATED MAY 4, 1977

In the Avis proxy material dated May 4, 1977, management proposed an amendment to the By-laws of Avis and an amendment to the Certificate of Incorporation of Avis. The proxy states, "The proposed amendments ... are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors."

The proposal amendments, taken together with the proposed broad distribution of all but 22% of the outstanding Avis common stock, would have the effect of eliminating from the market price of Avis common stock the premium which would be paid by sophisticated investors for the shares of such a logical take-over candidate. This fact is conceded in the proxy material, which states as follows:

> "The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock followed by a forced merger or similar transaction, regardless of whether such transaction might be in the best interests of the Company and its stockholders. The proposed amendment would

> make it more difficult to effect such a transaction and might therefore discourage an attempt to do so. The proposed amendment would help protect the Company's public stockholders against the danger of a disadvantageous transaction between the Company and a substantial holder of the Company's stock or its affiliates, but the Board recognizes that a conflict of interest betweeen such a substantial holder and the public stockholders may not exist in all situations and that certain transactions which might be discouraged by the proposed amendment might be in the best interests of the Company and its stockholders." [Emphasis added.]

Since the negative vote or abstention of only five directors would require a positive vote by 80% of Avis' shares to accept a take-over bid, prospective bidders would be deterred, particularly when such bidders observe that at least three directors could appear to have substantial personal interests in retaining their positions independent of the best interests either of Avis or its shareholders.

The proposed amendment to the Certificate of Incorporation is extraordinary in that most corporations require either majority approval or, at most, two-thirds approval for merger proposals. Furthermore, a simple majority vote of corporate boards of directors is the most common requirement for recommending such approvals. This proposal, when combined with the proposed staggered board (on which the Trustee and his law partner would have different teams), and with other

steps inhibiting a change of control (see p. 8), reduce the attractiveness of the Avis shares to sophisticated investors.

Contrary to assertions by the Trustee's financial advisors that these changes "redound to the ultimate benefit of shareholders", the force and effect is to transfer shareholder rights to a board that has a negligible financial stake in the Avis common stock. The ultimate protections for Avis shareholders lie in full disclosure requirements under the securities laws, their rational selection of economic alternatives without reference to the personal best interests of Avis' board members, and the freest possible market competition for Avis shares.

FINANCIAL ISSUES WITH RESPECT TO THE SALE AVIS COMMON STOCK HELD BY THE TRUSTEE

(1) Impact on Public Shareholders of Avis

The market price of Avis common stock has been adversely impacted by the overhang of the shares held by the Trustee, a fact which has been conceded in various reports by the Trustee's financial advisors, Mr. Raymond Troubh and Mr. Ora Roehl. Additional factors hampering the market acceptance of Avis common stock include uncertainties surrounding future United States energy policy, the recent uptrend in short-term interest rates, the low dividend yield relative to other yields available in the financial markets, the probable need for additional equity financing, structural changes in the securities industry, and the prospective loss of take-over bid potential as a result of the proposed amendments to Avis' By-laws and Certificate of Incorporation.

Given the importance of the issues surrounding energy policy, this uncertainty seems likely to be a continuing factor. Given the Carter Administration's apparent desire to curb inflation, the outlook for short-term interest rates over the coming year points towards higher levels.

At the current annual dividend rate of $0.40, and based on the price of $14 prior to Fuqua's announcement, Avis common stock yields only 2.86%. This compares with 4.3% for the Standard & Poor's Industrial Index, 8.4% for A-rated industrial debentures, 5.1% for ITT common, and 8.6% for ITT 8.9% sinking fund debentures due 1995. The corporations owning Avis' principal competitors currently have indicated dividend yields of 4.5% for Transamerica Corporation (parent of Budget Rent A Car), 3.8% for RCA Corporation (Hertz), and 6.0% for Household Finance Corporation (National Car Rental).

Avis is in a capital-intensive business and our analysis, as well as past reports by the Trustee's financial advisors, suggest the desirability for Avis of raising additional equity capital. The likelihood of such transactions lead investors to apply some discount to Avis' earnings multiple, and also discourage investors from aggressively bidding up the price of the shares.

Furthermore, the securities industry has been going through dramatic structural changes which have reduced both the number of sales personnel and the size of research staffs. Because of these changes, the securities of small to medium-sized companies have often been neglected because

of the greater efficiency attached to dealing principally in securities of larger companies with broader investment interest.

Prior to the announcement in January 1976 that the Trustee had obtained court approval to distribute the Avis shares beneficially owned by ITT through a series of public offerings, many sophisticated investors and analysts considered the sale of contol of Avis to a major corporation to be a possible course of action for the Trustee. A comparison of the price/earnings ratio of Avis with that of the Standard & Poor's Industrial Index ("S&P") from 1975 to date shows that the Avis price/earnings ratio as a percentage of the S&P price/earnings ratio fell sharply after January 1976, and Avis' relative price/earnings ratio has consistently remained below its 1975 level ever since. (See Exhibit A). In our judgment, the 1975 Avis market prices reflected a premium attributable to the potentiality of a take-over of Avis.

As the only major independent car rental company, Avis common stock should offer a special appeal by reason of its take-over potential. Since the pattern in the industry has been to combine this type of business with the resources of a major corporation, it would be logical to

to assume that Avis is a prime candidate for such a take-over. However, as discussed above, the proposed amendments if adopted, would make such a future combination highly improbable in the eyes of sophisticated investors.

The inclusion of a provision in Avis' bank agreements of a provision enabling the banks to declare their loans due and payable in the event of ownership of more than 50% of the shares by anyone other than the Trustee is taken by sophisticated investors as a warning flag that the management of Avis is prepared to resist take-over efforts, as is the extraordinary provision in Avis' agreement with the New York Stock Exchange which would permit such Exchange to delist Avis' shares if a buyer acquires as little as 10% of the common stock.

However, we consider it unlikely that the proposed acquisition by Fuqua would trigger adverse action by Avis' bank lenders, and we also consider it unlikely that the purchase of 47% of the Avis shares by Fuqua would induce the New York Stock Exchange to delist the Avis shares. In view of Fuqua's announced intent to offer a tax-free merger to Avis' public shareholders, the question of delisting is likely to become moot. However, it should be noted that, even if Avis were to be delisted from the New

York Stock Exchange, it would be likely to be eligible for listing on the American Stock Exchange and/or one or more of the several regional stock exchanges. We have reviewed the price action of shares delisted for non-financial reasons from the New York Stock Exchange in the past three years and subsequently listed on the American Stock Exchange.* In each case, the price action of the shares subsequent to listing on the American Stock Exchange was favorable in comparison to prior price action on the New York Stock Exchange.

We understand that Fuqua intends to offer to the shareholders of Avis, within thirty days of its purchase of the Avis shares held by the Trustee, a tax-free merger between Avis and Fuqua on a common-for-common basis. The combined company would have pro forma profits before taxes in the range of $60 million, and with an indicated market value of its common equity in the area of $200 million, the vast majority of which would be in the floating supply.

---

* 1. Foote Mineral Company (90% of common stock and 48% of convertible preferred stock owned by Newmont Mining Corp.).

2. Martin Processing, Inc. (too few round lot holders).

3. Wang Laboratories, Inc. (created new class of stock with special voting rights).

4. Wesco Financial Corporation (80% of common stock owned by Blue Chip Stamps).

This would qualify it for such generally favorable events as broader institutional interest, listed options, improved research coverage and good market liquidity.

Furthermore, the combined companies would not fall into the "conglomerate" category, as more than half of its profits would be from Avis' business and more than two-thirds of its profits from the transportation business. This represents a far more homogeneous earnings stream than that of such well-known companies as RCA, ITT, and Transamerica.

The combined company would be a well-capitalized, vigorous business entity with substantial access to capital and a broad public market for its common stock. The effects of such combination may be inferred from the records of Avis' two principal competitors, Hertz and National Car Rental.* The sales, net income, and net income as a percentage of sales of Avis, Hertz and National Car Rental for the period 1972-76 are presented in Exhibit B. The table shows that, although Avis' sales gain of 48% during the four-year period from 1972 to 1976 was better than the sales gain recorded by its two largest competitors, its earnings increase of 103% was less than that obtained by either of the other firms. In 1972,

* Comparable financial data of Budget Rent A Car is not published in the Annual Report of its parent company.

Avis' net profit margin of 2.8% was equal to National's and somewhat better than that of Hertz; although Avis' net margin improved to 3.8% in 1976, Hertz and National had margins of 5.3% and 4.8%, respectively.

The standing of Fuqua's securities in the eyes of the financial community is reflected in the list of prominent investment banking firms who, on March 17, 1977, committed their own capital toward a $60 million underwriting of Fuqua senior subordinated debentures and common stock. This group, headed by Lehman Brothers Incorporated, included as major underwriters:

Bache Halsey Stuart Inc.
Bear, Stearns & Co.
Donaldson, Lufkin & Jenrette Securities Corporation
Drexel Burnham & Co. Incorporated
Goldman, Sachs & Co.
Kidder, Peabody & Co. Incorporated
Loeb Rhoades & Co. Inc.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Paine, Webber, Jackson & Curtis Incorporated
Reynolds Securities Inc.
The Robinson-Humphrey Company, Inc.
Shearson Hayden Stone Inc.
Smith Barney, Harris Upham & Co. Incorporated
Warburg Paribas Becker Inc.
Wertheim & Co., Inc.
White, Weld & Co. Incorporated
Dean Witter & Co. Incorporated

(2) Impact on ITT
as a Shareholder

Fuqua's bid would yield $15.50 net in cash to ITT. Based on the market price of $12-1/8 for Avis common stock on March 25, following the initial announcement of the proposed secondary offering, ITT would realize about $11.20 per share from the sale of its 2 million shares. This assumes a total underwriting and selling "spread" of 6% and an additional $0.20 per share for costs and expenses of the underwriting.* If we base ITT's hypothetical proceeds on the $14 market price of Avis on May 17, immediately prior to the announcement of Fuqua's bid, the net proceeds to ITT would be about $12.96 per share.

ITT would retain 1,743,504 shares following the completion of the proposed underwriting. Let us assume (a) that the next underwriting would be in about 12 months and would have comparable underwriting costs; (b) that the annual dividend of Avis would be increased to $0.60 per share ($0.555 net of taxes to ITT); and (c) that cash is worth 8% (4% net of taxes) per year to ITT. Given the above assumptions and an assumed $14 offering price in 1977, the market price of Avis stock would

* In the May 27, 1976 offering, the underwriting spread was 7.03% and expenses paid by ITT were approximately $389,000 ($0.311 per share).

have to increase to $20 over the 12 months for ITT to realize, through a public offering one year later, the total proceeds of $58 million equivalent to the Fuqua offer. Thus, from the recent price of Avis stock of $14 per share, a price increase of 43% over the next 12 months would be necessary just for ITT to break even. Based on the $12-1/8 price at the time of the announcement, it would have been necessary for the Avis shares to sell at $22-3/8 after 12 months to realize an equivalent result.

(3) Impact on
Avis Corporation

According to its latest audited year-end financial statements, Avis had $100 million of debt maturing during 1977. In addition, the present capital structure of Avis, and the reports of the Trustee's financial advisors, suggest that an increased equity base will be required for the further expansion of Avis' business. Since the equity market tends to limit the total amount of dollars that can be raised by a single issuer at any given time, the continuing sale and/or the potential sale of common stock by the Trustee interferes with and reduces the ability of Avis to raise equity capital in the public market. Furthermore, Avis' principal competitors are in the hands of corporations with assets far

greater than the assets of Avis. Budget Rent A Car is owned by Transamerica Corporation (total assets $5.2 billion); Hertz is owned by RCA Corporation (total assets $3.8 billion); and National Car Rental is owned by Household Finance Corporation (total assets $3.5 billion). If Avis had access to the capital available to Fuqua for the expansion of the Avis business, then Avis could be a more dynamic company and a more vigorous competitor than by operating on its own. This is underscored by Avis' history wherein they found it necessary to look to ITT for a vital injection of new equity capital as recently as 1975.

The proposed "locked-in" management of Avis, which appears to make it invulnerable to change through either shareholder action or outside take-over, contrasts sharply with the circumstances at Fuqua. Fuqua's history has consisted of a dynamic, performance-oriented management group. In exercising corporate democracy, Fuqua has not shielded its management with such steps as a staggered board and disproportionate voting provisions with respect to outside take-overs.

EXHIBIT A

		Avis Month End Price	Avis E.P.S. (a)	Avis P/E	S&P Industrial Index	S&P E.P.S. (b)	S&P P/E	Avis P/E as % S&P P/E
1975	January	$ 6	$1.11	5.41x	85.63	$ 9.69	8.84x	61%
	February	7-1/4	.64	11.33x	91.16	9.69	9.41x	120%
	March	7	.64	10.94x	93.54	9.69	9.65x	113%
	April	7-3/8	.73	10.10x	98.42	9.17	10.73x	94%
	May	8-5/8	.73	11.82x	102.65	9.17	11.19x	106%
	June	7-7/8	.73	10.79x	106.86	9.17	11.65x	93%
	July	7-1/2	.85	8.82x	99.58	8.61	11.57x	76%
	August	6-3/4	.85	7.94x	97.54	8.61	11.33x	70%
	September	7	.85	8.24x	93.95	8.61	10.91x	76%
	October	7-5/8	.86	8.87x	99.74	8.32	11.99x	74%
	November	7	.86	8.14x	102.19	8.32	12.28x	66%
	December	7-1/4	.86	8.43x	100.88	8.32	12.13x	69%
1976	January	9-1/4	.86	10.76x	113.10	8.55	13.23x	81%
	February	12-1/8	1.45	8.36x	112.02	8.55	13.10x	64%
	March	10-3/4	1.45	7.41x	115.66	8.55	13.53x	55%
	April	9-7/8	1.54	6.41x	114.28	9.35	12.22x	52%
	May	9-1/4	1.54	6.01x	112.68	9.35	12.05x	50%
	June	10-1/8	1.54	6.57x	117.38	9.35	12.55x	52%
	July	10-1/4	1.79	5.73x	115.96	10.02	11.57x	50%
	August	11-5/8	1.79	6.49x	115.18	10.02	11.50x	56%
	September	11-1/4	1.79	6.28x	118.07	10.02	11.78x	53%
	October	10-1/8	1.86	5.44x	115.03	10.31	11.16x	49%
	November	10-5/8	1.86	5.71x	113.77	10.31	11.03x	52%
	December	13-1/8	1.86	7.06x	119.46	10.31	11.59x	61%
1977	January	14	2.11	6.64x	113.28	10.68	10.61x	63%
	February	13-1/2	2.11	6.40x	111.07	10.68	10.40x	62%
	March	12-1/4	2.11	5.81x	109.35	10.68	10.24x	57%
	April	13-1/8	2.37	5.54x	109.00	11.00(c)	9.91x	56%

(a) As reported in S&P Monthly Stock Guide.
(b) For preceding quarter.
(c) Bear, Stearns estimate.

EXHIBIT B

	AVIS (a)			HERTZ (b)			NATIONAL CAR RENTAL (c)		
	Sales (millions)	Net Income (millions)	Net Income as % of Sales	Sales (millions)	Net Income (millions)	Net Income as % of Sales	Sales (millions)	Net Income (d) (millions)	Net Income as % of Sales
1972	$292	$ 8.1	2.8%	$636	$15.4	2.4%	$123	$ 3.5	2.8%
1973	349	11.3	3.2	677	19.3	2.8	140	(15.9)	(loss)
1974	377	5.2	1.4	722	23.2	3.2	146	4.3	2.9
1975	393	10.6	2.7	715	27.4	3.8	155	3.9	2.5
1976	433	16.4	3.8	780	41.4	5.3	174	8.4	4.8
% Change 1972-76	48%	103%		23%	169%		41%	140%	

(a) Source: Avis, Inc. Form S-7, dated May 17, 1977.

(b) Source: RCA Corporation, 1976 Annual Report.

(c) Source: Household Finance Corporation, 1976 Annual Report.

(d) Before unrealized foreign exchange gains or losses; after extraordinary items in 1973 and 1975.

EXHIBIT B

BIOGRAPHY

Name: Gilbert E. Matthews

Age: 47

Education: A.B. Harvard College - 1951.

M.B.A. Columbia University - Graduate School of Business - 1953.

Additional graduate work in finance, New York University - 1960-62.

Professional Experience: Joined Bear, Stearns in 1960 as a Security Analyst; Member, New York Society of Security Analysts; Chartered Financial Analyst.

Joined Corporate Finance Department in 1967. Became limited partner in 1973; Activities have included extensive work in the areas of mergers and acquisitions, tender offers, opinion letters, preparation and co-authorizing of expert testimony, underwritings of equity and debt securities, private placements and other related corporate finance activities.

Co-authored expert testimony on behalf of Chris-Craft Industries, Inc. valuing securities fo purpose of determining damages in litigation against Bangor Punta Corporation and others. Authored expert testimony on behalf of Internal Revenue Service valuing for tax purposes a corporation sold by defendants.

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF CONNECTICUT

3 - x

4 ROBERT PRATHER, :

5 Plaintiff, :

vs. CIVIL H-77-222

6 :

AVIS, INC., Et Al,

7 :

Defendants

8 :

- x

9

SIDNEY H. MILLER, :

10

Plaintiff, :

11 vs. CIVIL H-77-226

:

12 AVIS, INC., Et Al,

:

13 Defendants

:

14 - - - - - - - - - - - - - - x

15 UNITED STATES OF AMERICA :

16 vs. :

CIVIL 13,320

17 INTERNATIONAL TELEPHONE & :

TELEGRAPH and THE HARTFORD

18 FIRE INSURANCE COMPANY, :

19 Defendants, :

and

20 :

AVIS, INC.,

21 Defendant-Intervenor :

22 and :

23 PUQUA INDUSTRIES, INC., :

24 Plaintiff-Intervenor :

25 - x

MAY 23, 1977
HARTFORD, CONNECTICUT

B E F O R E:

HON. M. JOSEPH BLUMENFELD, SENIOR JUDGE.

ORDERS TO SHOW CAUSE

A p p e a r a n c e s:

For Plaintiff Prather and Plaintiff-Intervenor Fuqua:

IRVING S. RIBICOFF, ESQ.
Messrs. Ribicoff and Kotkin
799 Main Street
Hartford, Connecticut

MILTON S. GOULD, ESQ.
Messrs. Shea, Gould, Climenko and Casey
330 Madison Avenue
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For Plaintiff Miller:

ERIC L. KEISMAN, ESQ.
STEPHEN D. OESTREICH, ESQ.
Messrs. Wolf, Popper, Ross, Wolf & Jones
845 Third Avenue
New York, New York

JONATHAN J. EINHORN, ESQ.
Messrs. Berdon, Young & Einhorn
132 Temple Street
New Haven, Connecticut

HEMLOCK
PRESS, INC.
COPYING CENTER

1 **Appearances (Continued):**

2 **For Defendant Avis, Inc.:**

3 JOHN TENER, ESQ.
Messrs. Robinson, Robinson & Cole
4 799 Main Street
Hartford, Connecticut

5

JAY TOPKIS, ESQ.
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THE COURT: Mr. McNamara, are you on your feet for some purpose?

MR. McNAMARA: Yes, your Honor.

I would like to introduce to you Mr. Patrick H. Sullivan, who is a member of the New York Bar, admitted to practice before the various federal courts of New York, the Second Circuit, who is a partner in Whitman & Ransom and will represent Mr. Smith this morning, and move his admission for that purpose.

THE COURT: All right.

May I have the name again?

MR. McNAMARA: Patrick H. Sullivan, your Honor.

THE COURT: Patrick H. Sullivan.

MR. RIBICOFF: If your Honor please, I would also like to move the admission for the purposes of these cases of Milton S. Gould, who meets all the requirements under the Connecticut Rules, who will be representing both Fuqua and --

THE COURT: Mr. Gould has been here before.

MR. TENER: May it please the Court. Your Honor, I would like to introduce to you Jay Topkis of the firm of Paul, Weiss.

THE COURT: I know Mr. Topkis.

1 May be admitted.

2 MR. EINHORN: If your Honor please, I'm

3 John Einhorn of the firm of Berdon, Young & Einhorn,

4 and I would like to introduce Mr. Eric Keisman --

5 THE COURT: You turned your head as you

6 mentioned his name.

7 MR. EINHORN: Eric Keisman, if your Honor

8 please.

9 THE COURT: How do you spell it?

10 MR. EINHORN: K-e-i-s-m-a-n, of the firm of

11 Wolf, Popper, Ross, Wolf & Jones in New York City.

12 THE COURT: All right.

13 May be admitted for this case.

14 MR. EINHORN: Thank you, your Honor.

15 MR. KEISMAN: Representing the plaintiff

16 Miller, your Honor.

17 MR. GOULD: Can we proceed, your Honor?

18 THE COURT: Yours is the first matter, I

19 guess, Mr. Gould.

20 MR. GOULD: I would think.

21 THE COURT: Yes.

22 MR. GOULD: Since I stimulated this, maybe

23 I had better go first.

24 THE COURT: All right.

25 MR. GOULD: If the Court please, I'll just

1 take a minute to bring the proceeding into focus.

2 There are two matters before the Court. The

3 first is in the pending case of United States

4 against ITT. There I represent Fuqua Industries,

5 who seek to intervene in the action to the end that

6 we may apply to the Court for an order amending

7 the Trustee's Order Number 3 to permit the Trustee

8 to act upon and hopefully to accept the Fuqua offer.

9 We also ask the Court to take the appro-

10 priate action to defer the annual meeting until

11 this Court and the Trustee, and whoever else

12 establishes an appropriate interest, can study the

13 Fuqua order.

14 So that's proceeding number 1 to which I

15 propose to address myself first.

16 Proceeding number 2 that's before your

17 Honor -- and unless your Honor evinces some

18 indication that we separate them for purposes of

19 argument, I would propose to intermingle them. I

20 don't want to waste the Court's time.

21 THE COURT: There is a certain overlap.

22 MR. GOULD: Yes, your Honor.

23 THE COURT: I don't mind allowing you to

24 proceed on the several points while you're on your

25 feet. But I would prefer not to have too much

1 intermingling as we go along. See if we can't
2 concentrate on issue by issue separately.
3 MR. GOULD: Yes, I intend to do that, your
4 Honor.
5 THE COURT: All right.
6 MR. GOULD: I want to make it as simple and
7 as prompt as possible. That's why I'm doing that,
8 rather than dealing with formalities.
9 THE COURT: All right.
10 MR. GOULD: The second action, of course, is
11 the action brought by Mr. Prather, who is an
12 official of Fuqua, but he brings it in his capacity
13 as an Avis stockholder. He alleges false and
14 misleading statements in the proxy material and he,
15 on application of different law, seeks to enjoin
16 the annual meeting until the alleged misrepresenta-
17 tions, omissions, misleading statements have been
18 corrected.
19 I'm conscious, as I speak, that there has
20 already been an effort made to affect such correc-
21 tions, and we'll address ourselves to those at the
22 appropriate moment.
23 The Fuqua offer, which lies at the heart
24 of this entire matter and which is responsible for
25 bringing all these people, I suppose, before you in

1 Hartford today, is that we propose to pay to the
2 Trustee $15.50 in cash for each share of the 47
3 percent of the Avis shares which the Trustee holds.
4 As far as the public is concerned, our
5 proposal is that they would not get cash now. If
6 we, Fuqua, should purchase the Trustee's shares we
7 undertake as our representation to the Court to
8 offer to the public shareholders of Avis a tax-free
9 exchange of securities in at least an equivalent
10 amount of money.
11 THE COURT: May I ask a question here?
12 MR. GOULD: Of course, your Honor.
13 THE COURT: How do you propose to make that
14 tax free?
15 MR. GOULD: Well, we will give them stock
16 and we will do it in a tax-free exchange.
17 THE COURT: What provision of the Code do
18 you rely upon to make it tax free?
19 MR. GOULD: Well, your Honor, I can't quote
20 you verse and chapter. I'm advised by the tax
21 people that it can be effected on a tax-free basis.
22 THE COURT: Well, I'm presently involved in
23 a big lawsuit in which ITT --
24 MR. GOULD: I know of it, your Honor.
25 THE COURT: -- was held not to be making a

1 tax-free offer because they had not divested
2 themselves of shares previously acquired for cash.
3 MR. GOULD: Fortunately, we don't have that
4 disability, your Honor. We don't have any Avis
5 stock.
6 THE COURT: Well, you propose to buy Avis
7 stock for cash.
8 MR. GOULD: Yes sir.
9 THE COURT: And then you say after you've
10 bought it for cash you're going to provide a
11 tax-free exchange for these shareholders?
12 MR. GOULD: Well, your Honor, I'm advised
13 by the experts that it can be done under a doctrine
14 which I'm told is called continuity of interest, the
15 ownership of 50 percent, and my attention is directed
16 to the regulations of the IRS, Section 1.368-1(b).
17 We would have to satisfy your Honor that we have
18 the capacity to do it.
19 THE COURT: Not me.
20 MR. GOULD: We would have to satisfy your
21 Honor that we have the concurrence --
22 THE COURT: I tried to get that case, but
23 they wouldn't bring it here. I wanted that.
24 MR. GOULD: Your Honor, I'm mindful of the
25 strictures.

We would have to satisfy first the Internal Revenue Service, and before we could implement this transaction we would have to satisfy a lot of people that it's tax free.

THE COURT: I bring it up, perhaps mistakenly, because it has, I suppose, some bearing upon the extent of the disclosure of your own offer.

MR. GOULD: Of course, your Honor. I'm not oblivious to what happened in the ITT case.

THE COURT: Okay.

MR. GOULD: As your Honor knows, I was a peripheral participant in it, and I know the problem that arose there, and I'm advised authoritatively that I need not deal with it. And that explains why I didn't come prepared to argue the tax free aspects of it. Your Honor got me off balance.

THE COURT: All right.

I don't think you will have trouble getting back on the track. Will you?

MR. GOULD: Well, I'll try. I'll do my best.

THE COURT: All right.

MR. GOULD: Now, what we propose to do is to make that proposal. I don't intend to spend very much time discoursing to your Honor on the quality of the Fuqua securities that would be involved.

I do have people from the investment banking community present and if your Honor should indicate an interest in going into that subject we are prepared to deal with it.

I would like, at the outside, to apologize to all concerned for the atmosphere of exigency which has been created by our application to the Court. I assure the Court that that resulted from no fault on our part.

We have been looking at the Avis situation for a considerable period of time - at least seven or eight months. There were reasons on our side why no action was taken prior to this. But we were forced into action by learning from the Wall Street Journal on May 12th of the proposals which were being presented by the Avis management to its stockholders. Proposals which if they were adopted by the stockholders would undoubtedly have the effect of scaring us off, and probably anybody else who would be interested in acquiring Avis.

I'll address myself to that in a few moments, but I want to explain why we had to move so quickly.

THE COURT: Do you think scaring you off has caused the recent increase in the public price of Avis shares?

MR. GOULD: I don't think there is any question, your Honor, that our appearance on the scene and our appearance --

THE COURT: Has brought up the price?

MR. GOULD: --giving the price has had the almost automatic reaction of creating an arbitrage situation, which probably lifted the price of the stock.

I don't like to pretend to be an expert --

THE COURT: You don't think it's because of the proposal put forth before the Directors that would make it a little more difficult to effect a merger that has brought the price up?

MR. GOULD: No, I don't think so, your Honor.

THE COURT: I see.

MR. GOULD: I don't think so at all.

And if that were to become an issue, I would be prepared to deal with it on a professional basis; which means that I wouldn't try to substitute my judgment as a lawyer for what really is a judgment for experts with an investment banking background.

THE COURT: All right. That sounds like good judgment on your part.

MR. GOULD: I wouldn't try to improvise.

1 THE COURT: Okay.

2 MR. GOULD: My own reaction, which is not an
3 expert one, is that the increase in price in the
4 last week or so is the result of somebody coming
5 forward and saying, "I'm ready to pay 15½ dollars".
6 That's just a guess on my part. I'm not an expert.

7 THE COURT: All right.

8 MR. GOULD: Now, your Honor will recall, of
9 course, that in the December 15th report to the
10 Trustee from Mr. Troub the suggestion was made --
11 more than a suggestion; I think there was a very
12 vigorous affirmative position that the Trustee should
13 examine all efforts to purchase on their merits.

14 And, frankly, that's all that we are asking
15 here is that our proposal do be examined on its
16 merits. So far the Trustee, as understandably, I
17 suppose, refused even to consider the Fuqua proposal.

18 Now, there have been some indications that
19 perhaps what Mr. Fuqua's company should have done here,
20 what Fuqua Industries should have done was to try
21 to make a tender offer, a public tender offer.

22 I think that would have created even more
23 confusion and more difficulty than the proposal we
24 have made now.

25 I don't feel that we're in any state which

1 requires some of the pejoratives that have been
2 applied to us just because we made this proposal.
3 Now if we want to discuss the impact of this
4 offer on the economics of Avis, again I would
5 suggest to your Honor that that should be done by
6 experts and not by lawyers who can only parrot what
7 they say.
8 The proposals with which I'm sure your Honor
9 is at least as familiar as I am which have triggered
10 this action on our part are the proposals first -
11 that's proposal number 2 in the proxy statement - for
12 a staggered Board of Directors. Quite frankly, if
13 that's adopted anybody who wants to come into the
14 Avis situation with a control position would have to
15 wait two bears before - at least two years; two
16 annual meetings - before he could elect a majority
17 of the Board. So that's offensive to us if we're
18 going to do it.
19 Next, proposal number 3, which would require
20 the affirmative vote of 80 percent of the share-
21 holders for any merger which had not in advance
22 been approved by two-thirds of the Directors.
23 Now, I don't think anybody has any
24 illusions about the purpose of these proposals to be
25 presented to the stockholders.

1 THE COURT: Well, I think they are
2 explicated in the notice.
3 MR. GOULD: I think so, too. I think
4 Paragraph 6 of the proxy statement --
5 THE COURT: Explain why they did it or why
6 they propose it.
7 MR. GOULD: That's correct.
8 THE COURT: Right.
9 MR. GOULD: It's no different from the
10 reasons why other people have resorted to these
11 things. It's to keep anybody from coming in.
12 And whether that's a wise thing or an
13 unwise thing is not for me to say. Reams have been
14 written on this subject.
15 THE COURT: Well, no legislature has said
16 it's improper or illegal.
17 MR. GOULD: On the contrary, some legis-
18 latures have made it possible to do this.
19 THE COURT: Yes.
20 MR. GOULD: And some companies and some
21 lawyers have thought it appropriate to do it.
22 Whether in the peculiar circumstances of
23 the Avis situation it is wise or appropriate is
24 perhaps, in the end, for the courts to decide.
25 There's no purpose in my expressing opinions about

1 it.

2 I'm frank to admit to your Honor that in

3 companies in which I have either a direct pro-

4 fessional or proprietary interest, in some instances

5 we've rejected it, in at least one other that I

6 know of we have done the same thing. But I think

7 the circumstances were different.

8 THE COURT: Okay.

9 MR. GOULD: That's all I can say about it.

10 THE COURT: A matter of judgment.

11 MR. GOULD: I don't think that there is any

12 deep moral problem involved in this.

13 THE COURT: No. I think the Supreme Court

14 has recently said that in Santa Fe, didn't they?

15 They said if the law permits it, it's all right.

16 MR. GOULD: I think that was a little

17 different. But I really don't want to take your

18 Honor's time to argue it.

19 THE COURT: Okay.

20 MR. GOULD: Because I think it has to be

21 judged on its application to the facts in this case.

22 This case is, of course, a sport. It's

23 different from the ones where a board of directors,

24 a normal board of directors running a completely

25 normal company, not under a divestiture decree,

1 undertakes to protect itself by these devices. I
2 think those are very substantial differences.
3 There may be other cases in which a company
4 under divestiture order has done this. I have
5 never heard of them and I doubt very much if there
6 are such cases.
7 THE COURT: Well, it's appropriate that the
8 case should be in this court because we specialize
9 in cases of first impression. And that's what we
10 have here, right?
11 MR. GOULD: Well, you have a case of first
12 impression, --
13 THE COURT: Which you call a sport.
14 MR. GOULD: -- but I'd be ready to call your
15 Honor as to whether it's this court or some other
16 court that specializes in cases of first impression,
17 because within the last few weeks --
18 THE COURT: We'll match our record against
19 anybody.
20 MR. GOULD: I mean you're holding your own
21 pretty good up here.
22 THE COURT: Well, go ahead.
23 MR. GOULD: Now, the investment bankers
24 whom we have consulted with respect to this have
25 made a comparative analysis as between the invocation

1 of these protective devices in this case and those
2 in other cases. They are here, and if your Honor
3 wants to get into that subject we can do it.
4 I think it will serve my immediate purpose at
5 best if I simply tell you, tell your Honor, that --
6 THE COURT: They're on your side, those you
7 have brought.
8 MR. GOULD: I would expect the experts
9 that we hire to be on our side, just as I expect the
10 experts that are hired by Avis to be on their side.
11 I mean this is a fact of life about experts, your
12 Honor.
13 They do characterize it as extraordinary,
14 and I think there is an evidentiary basis for their
15 conclusion. Plainly if the Directors are not able
16 to exercise a veto over a shareholders decision to
17 sell to Fuqua, should that contingency come to pass,
18 that is a substantive matter to be considered.
19 The Directors may have a view here that the
20 Avis stock will appreciate substantially in the
21 next few years. I suggest, your Honor, that a
22 shareholder may or may not wish to accept the Fuqua
23 offer. I think the most that I can urge on the Court
24 is that the individual shareholder, other than the
25 shares represented by the Trustee, should have the

1 right to examine the matter and to make a decision.

2 Now, I do not propose, unless your Honor

3 feels that it is appropriate, to argue at great

4 length the technical question of our right to

5 intervene.

6 THE COURT: That's the whole question,

7 isn't it?

8 MR. GOULD: Except that the law on it is

9 very limited. The right to intervene is affected

10 somewhat by the peculiar position taken by the

11 Department of Justice.

12 I don't know whether your Honor has seen

13 the exposition of their position which has been

14 given to me this morning. As I understand their

15 position --

16 THE COURT: Well, you're one up on me, I

17 guess.

18 MR. GOULD: I anticipated that, your Honor,

19 that on this point it had not been given to you.

20 Because I would have expected if it has -- Perhaps

21 it should be handed up.

22 THE COURT: Wait a minute. I may have it

23 here.

24 Well, briefly, are they on your side or not?

25 MR. GOULD: I don't know, your Honor. I

1 don't know whose side they're on. They can speak
2 for themselves; they are here.
3 THE COURT: Do they oppose intervention?
4 MR. GOULD: What they say in there is they
5 oppose intervention.
6 THE COURT: All right.
7 MR. GOULD: But - But they urge that we be
8 heard in the capacity of amicus curiae. That kind
9 of mystifies me.
10 In conversations with them - and they were
11 the friendliest possible conversations - in an effort
12 to clarify their attitude I am told that the
13 Department of Justice has taken a traditional
14 attitude to oppose interventions in these enforcement
15 cases of theirs.
16 Now, I would have expected - I did, indeed,
17 anticipate that in pursuance of that traditional
18 attitude they would have come in here and said no,
19 do not hear Fuqua on its application to intervene.
20 Instead of that, they say you can hear them,
21 please do hear them. Indeed, I read what they say
22 as an affirmative suggestion to the Court that we
23 should be heard, but hear them in their capacity as
24 amicus curiae rather than as intervenors.
25 Now, I think in fairness to the Justice

1 Department position I should explain who I under-
2 stand what they're saying.
3 I think that at the nub of their position
4 is that they want divestiture to take place,
5 complete divestiture to take place as promptly as
6 possible. I gather that they are not entirely
7 happy with the program of piecemeal divestiture to
8 the public, which is the present program of the
9 Trustee. And if I read them correctly here, they
10 say do it and get it over with.
11 Well, sir, if indeed that is their attitude,
12 then they are on my side, because what I am
13 proposing is that it get done and get done as
14 quickly as possible.
15 We contend to your Honor that notwithstanding
16 the attitude expressed by the Justice Department we
17 do have a right to intervene under Rule 24. We
18 think we have a right to intervene, that is, the
19 intervention as of right delineated by the Rule.
20 We base that on the fact that we do have an interest
21 in the property or in the transaction that is the
22 subject of the action, which is the Trustee's shares
23 and their divestiture.
24 THE COURT: You have an interest in buying
25 them.

1 MR. GOULD: In buying them.

2 THE COURT: You're a customer.

3 MR. GOULD: And a good one. And a good

4 customer.

5 THE COURT: That's another question.

6 But, at any rate, the theory is that you're

7 a customer for the shares, they give you an interest.

8 MR. GOULD: And that's an interest

9 contemplated by the Rule.

10 THE COURT: Okay.

11 MR. GOULD: The second aspect of any test

12 for intervention is that we are so situated that

13 a disposition of the matter absent an intervention

14 would, as a practical matter, certainly impede our

15 ability, maybe even frustrate our ability to

16 protect that interest.

17 In other words, if we are not permitted to

18 intervene --

19 THE COURT: You're not prepared to try

20 harder. Is that it?

21 MR. GOULD: Well, try harder in the courts,

22 your Honor, but maybe not try harder in the public

23 arena.

24 But certainly it looks as if we would not

25 be able to try any harder; as if the impediments

1 and the frustrations would defeat any effort on our
2 part, however motivated we might be.
3 Obviously a successful intervention on our
4 part will require some substantial modification of
5 Trustee Order Number 3; some amendment to it. That's
6 the order in which your Honor directs and authorizes
7 the Trustee to go forward with these serial sales.
8 And elemantary what we're doing is challenging the
9 wisdom of that in the face of the Fuqua order.
10 The third test for intervention as of right,
11 which we understand is provided for in the Rule,
12 is whether our rights are adequately represented by
13 any of the existing parties.
14 Well, I suppose I might have walked into
15 this courtroom this morning hoping that the United
16 States Government would have protected that right.
17 But in view of shall I call it the equivocal
18 attitude they take, which is don't let them
19 intervene but hear them anyway, I think we have
20 met that third test.
21 So on those three principles we urge on the
22 Court that we have the right to intervene in this
23 case.
24 Of course, as an alternative matter, this
25 Court can allow us a permissive intervention under

1 (b)(2) of Rule 24 where the applicant's claim and
2 let's say the thrust, the gravamen of the main
3 action, comes in questions of law or fact in common.
4 I think we meet that test, as well, because
5 we do have questions of law and fact in common. All
6 that we're talking about is simply the divestiture
7 of ITT's holdings of Avis' common stock.
8 So that the common question, characterize it
9 as you will, as one of law or of fact, is the manner,
10 the technique, the process by which the trust
11 property should be divested, disposed of in a manner
12 which is most beneficial to all the parties.
13 Now here again I would have expected, under
14 normal circumstances, to be supported in our position
15 by ITT. Because if the effect of the Fuqua offer to
16 buy at $15.50 -- if the effect is to get more
17 dollars for ITT than any alternative technique, I
18 would expect that they would be standing here beside
19 me saying, "Get more dollars".
20 I have heard no expression of attitude from
21 ITT, unless somebody comes forward this morning.
22 While we have talked with them, they have not
23 communicated any point of view to us.
24 Your Honor will recall that the Trustee is
25 acting under Order Number 3 which was made on January

1 14, 1976. He is, under that order, directed to
2 begin the disposition of the trust property by this
3 series of public offerings - the first having been
4 done. One is in process now.
5 Plainly I'm not in a position, unless your
6 Honor rules on our right to intervene or invests
7 our standing here as amicus curiae. If we're to
8 adopt the Government's attitude with some kind of
9 mystical qualities, which I've never heard about
10 before - unless that happens I can't ask for the
11 relief I really need.
12 The relief I really need in this case is
13 that as promptly as possible we can address
14 ourselves to your Honor on the wisdom of maintaining
15 this Order Number 3 in its present form. And it is
16 for that reason that we joined with our application
17 for intervention an application to the Court to
18 enjoin the holding of the annual meeting of the
19 stockholders until such time as an appropriate
20 motion to amend can be made and can be acted on in
21 this Court.
22 In other words, we say don't do anything
23 irreparable until the Court can give full and
24 appropriate consideration to the wisdom, the
25 propriety of what it is we are trying to do.

1 We would, of course, if we are permitted
2 to do so by --
3 THE COURT: As I understand it this
4 situation presented by your client, Fuqua, sort of
5 underscores the seriousness of the proposal to amend
6 the By-laws.
7 MR. GOULD: Yes sir.
8 THE COURT: That's what it does, right?
9 MR. GOULD: It underscores it.
10 And, of course, if the amendments are made
11 we are frustrated because now who's going to woo
12 amarried woman.
13 THE COURT: This is an example of how the
14 proposed by-law would work.
15 MR. GOULD: That's right.
16 THE COURT: Right?
17 MR. GOULD: That's exactly right.
18 THE COURT: Okay.
19 For that purpose I'm glad to hear you make
20 an exposition of Fuqua's position.
21 MR. GOULD: Now let me point something
22 out, your Honor --
23 THE COURT: And that, I think, you have done.
24 MR. GOULD: Let me just point one other
25 thing out.

1 We are completely conscious of the fact
2 that if these steps - the staggered board, the
3 80 percent, you know, all the lock-in stuff - if
4 those should be adopted nobody is going to woo this
5 company. We know that.
6 On the other hand, we're completely conscious
7 that if this Court should hold that up and say,
8 "Now let's see if maybe the Fuqua offer shouldn't
9 get very careful consideration, see if it isn't a
10 good thing for everybody", we may find ourselves
11 tomorrow with competitors standing in precisely the
12 position that Fuqua is in today.
13 But then it may become an auction. Then
14 it may, as we have seen in this case in California
15 recently where competing groups came in, then we may
16 find ourselves simply competing with Company A or
17 Company B. My understanding of the situation is
18 that there have been other people who have
19 approached the Trustee, as indeed we approach the
20 Trustee.
21 Let me say with careful restraint everybody
22 has been discouraged.
23 THE COURT: All right.
24 MR. GOULD: But if your Honor holds up this
25 meeting we may find ourselves in this position and

1 the $15.50 may be much less than is realized.

2 THE COURT: All right.

3 MR. GOULD: Now I think I've told your

4 Honor enough about the Fuqua position on the first

5 case.

6 Now with respect to the other matter, the

7 proxy statement thing, there we have a somewhat

8 different situation and I address myself to it.

9 I am told this morning that there are

10 people representing stockholders who wish to

11 intervene in this case, and maybe they will be more

12 scholarly or more persuasive than I can be. But

13 let me explain to the Court where we stand.

14 I don't have to quote cases like TSC

15 Industries and the other cases which have become the

16 classical ones in this Section 14 situation. The

17 original proxy statement which was mailed --

18 THE COURT: Now you are on the Prather case,

19 I take it.

20 MR. GOULD: Yes sir. I assume your Honor

21 has heard enough.

22 THE COURT: You're right.

23 MR. GOULD: I would simply be repeating

24 myself. Your Honor understands the Fuqua proposal.

25 Now we are on a completely different tack,

1 and one which might be just as appropriate were
2 there no Fuqua proposal; and that is the adequacy
3 or inadequacy of the proxy statement.
4 I think the classical language which I
5 adapt from the TSC case is that "... An omitted
6 fact in a proxy statement is material if there is a
7 substantial likelihood that a reasonable shareholder
8 would consider it important in deciding how to
9 vote".
10 I think that's the litmus paper we apply to
11 this kind of a case. Of course, the cases are as
12 long as your arm.
13 On May 16th there was a registration
14 statement filed offering two million shares of
15 common. Obviously, the selling shareholder is the
16 Trustee.
17 The effect of such a sale would be to
18 reduce from 47 percent to 22 percent the percentage
19 of Avis stock held by the Trustee.
20 The proxy statement mailed a few days earlier
21 does not disclose the proposed secondary offering
22 or its intended registration. The proxy statement
23 is dated May 4th.
24 I cannot imagine, just as a matter of many
25 decades of experience in dealing with things like

1 this, that the people who promulgated the proxy
2 statement didn't know about the registration
3 statement when it was done.
4 I would have to say that that represents a
5 willful, deliberate attempt on the part of somebody
6 to withhold that from the stockholders who were
7 being solicited.
8 THE COURT: All right.
9 Now, one omission is the --
10 MR. GOULD: Failure to refer to the
11 registration statement.
12 THE COURT: Yes.
13 MR. GOULD: I think it is obviously
14 material, and I hesitate to take the time of the
15 Court to argue the question of materiality on that
16 omission.
17 THE COURT: All right.
18 MR. GOULD: Next, the proxy statement
19 contains the statement at Page 6 that, "Neither the
20 Company nor the Trustee is aware of any pending or
21 proposed transaction that would be affected by the
22 proposed amendments".
23 Well, sir, I urge that that's a misstatement
24 because they knew then about the proposed offering.
25 THE COURT: When?

1 MR. GOULD: Well, they knew it certainly on
2 May 4th.
3 Now if your Honor could make a finding of
4 fact that when they issued this on May 4th they
5 didn't know about the registration statement, it
6 would be one of the most astonishing statements I
7 ever heard of.
8 THE COURT: I'm sorry, I must have mis-
9 understood.
10 I thought you were speaking of their
11 awareness of an offer. You're speaking of their
12 awareness of --
13 MR. GOULD: Of the registration statement.
14 THE COURT: All right.
15 MR. GOULD: I cannot say to them, sir, that
16 on May 4th they knew of the Fuqua offer because I'm
17 quick to explain to your Honor that we didn't move
18 until the proxy statement came out, stimulated by
19 the lock-in provisions in the proxy statement.
20 THE COURT: All right.
21 MR. GOULD: But I think that it's clear
22 that now that the Fuqua offer is in the open --
23 THE COURT: Well, that's another thing.
24 I didn't want to get you off the track.
25 MR. GOULD: I've concluded on the subject of

1 the registration statement.

2 THE COURT: All right.

3 And the second then is?

4 MR. GOULD: The second is I will concede

5 that on May 4th they didn't know of the Fuqua offer.

6 I urge on the Court, though, that once they knew

7 about it it is a matter of sufficient materiality,

8 of sufficient importance so that the proxy statement

9 must be updated in order to inform Avis stockholders

10 of the Fuqua offer, and that the failure to do so

11 would be false and misleading within the meaning of

12 the cases.

13 Another omission from the original proxy

14 statement is that the compensation which has been

15 received by the Trustee is not referred to at all

16 there. The amount of such compensation, I urge on

17 the Court, is material so that a stockholder being

18 asked to vote for at least the temporary lock-in

19 provided for can evaluate the Trustee's interest in

20 proposing it and the interests of the Directors in

21 discouraging offers by third parties like Fuqua.

22 THE COURT: You understand the situation.

23 Mr. Gould, the compensation which the Trustee

24 receives qua Trustee does not come from this

25 corporation; it comes from the beneficiary.

HEMLOCK

1 MR. GOULD: Yes, I understand, your Honor.

2 THE COURT: It comes from ITT.

3 MR. GOULD: I cannot take the usual tack

4 here and say --

5 THE COURT: Well, it's not the usual

6 situation.

7 MR. GOULD: Because it's a very unusual

8 situation.

9 On the other hand, the fact that the Trustee

10 is getting compensation affects his interest or

11 disinterest, as the case may be.

12 THE COURT: Well, that's another question.

13 MR. GOULD: Well, that's the only point I

14 can make about it.

15 THE COURT: All right. As long as the

16 distinction is clear.

17 MR. GOULD: Yes, I understand it very well,

18 your Honor.

19 THE COURT: Very well.

20 MR. GOULD: Similarly, I understand

21 that the Whitman & Ransom fees, which are not

22 disclosed in the original proxy statement, are also

23 paid by ITT. Nevertheless, the fact that they are

24 being paid in a situation like this, which the

25 stockholder is being asked to perpetuate, is a

matter which goes to their interest or disinterest. It affects objectivity that somebody is getting paid.

Now I don't mean that invidiously. Mr. Smith and Whitman & Ransom I'm sure are people of the finest quality or they wouldn't be here doing what they are doing.

On the other hand, a stockholder being asked to perpetuate a system under which they are being compensated is entitled to know they are being compensated and to what extent.

So I suggest to the Court that those two omissions - Trustee's compensation, Whitman & Ransom's compensation - is material; the omission is a material omission.

Similarly there is no statement in the proxy statement, there is no disclosure that the Trustee as the holder of 47 percent of the common stock effectively controls the Board of Directors.

Now when I use a term like "effectively controlling it" I'm not making it up. I'm parroting the jargon which has been in the mouths of the Securities and Exchange Commission for several generations of lawyers now.

There is no doubt that by all the standards, all the criteria that we use when we employ a

phrase like that, the Trustee is in effective control.

THE COURT: Doesn't the statement say that by reason of the ownership of that stock he may be deemed -- "

MR. GOULD: He may be deemed.

THE COURT: -- to be in control.

MR. GOULD: That's a little different from saying he is in control, your Honor.

I don't know that that would get me by.

THE COURT: All right.

MR. GOULD: There is a difference.

THE COURT: That's another point.

MR. GOULD: There is a distinction. And your Honor, I'm sure, is mindful that the outcome of attacks on proxy statements have been controlled by distinctions a little less subtle than this.

Now I think it's necessary that that be in there.

The proxy statement contains this interesting language. It says that these proposals, the lock-in proposals, "...could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders".

I respectfully suggest to the Court that

1 that's an interesting understatement. I think that
2 the fact is that there can't be any changes in
3 management, particularly a change like the one
4 contemplated by the Fuqua proposal in the face of
5 proposals like that and that, therefore, that is not
6 adequately presented.
7 THE COURT: What do you mean "contemplated
8 by Fuqua"?
9 MR. GOULD: I beg your pardon?
10 THE COURT: Fuqua contemplates a clean
11 sweep, is that it?
12 MR. GOULD: Yes sir. And so would anyone
13 else coming in here in the position, you know, as
14 the outsider coming in.
15 So to say to a stockholder that they could
16 deter a change I think is, let's call it, an
17 understatement which could be material.
18 They do prevent a change. They're a dam,
19 they're a block. That's what they are there for.
20 They are not there to slow down a process; they are
21 there to prevent a process.
22 Now that's not just semantics, that's not
23 just words. There isn't going to be any change as
24 long as they've got these proposals.
25 What I'm trying to do is simply to enumerate

for your Honor what we found that was wrong in the proxy statement.

THE COURT: Well, you say that's wrong because you don't like it.

MR. GOULD: No, it's more than taste, your Honor.

THE COURT: Well, he has certainly explained fully what the purpose of the changes in the By-laws are, and that's the same purpose that you complain of.

MR. GOULD: No, your Honor.

THE COURT: That this could deter a takeover or merger.

MR. GOULD: Perhaps I haven't made myself clear.

It's one thing to say to stockholders that there's a paper wall or a one-foot ditch in front of a takeover.

THE COURT: You complain because he didn't say that this will absolutely prevent anybody from buying that stock?

MR. GOULD: That's right.

This is a mine field, this is a barbed-wire fence.

THE COURT: All right.

MR. GOULD: And there's all the difference in the world between something that, to use his language, "could deter a change" and something that is designed to keep everybody out. There is a difference - and I think I don't have to argue it any more.

That's a very careful lawyer's understatement of what the truth is.

The proxy statement goes on. It says that with respect to the proposals, "... that tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged". Could be discouraged. They are completely cut off. There's no way there's going to be any tender offers if they do this.

The same observations I make with respect to the earlier, "could deter a change", are applicable to this. I just think it's a strange way of telling the truth.

Now with respect to proposal number 3 in the notice, the proxy statement states: "... that the effect of the proposed amendments described above could be to discourage a tender offer or takeover bid", and so on.

1 Again that's a strange way of saying we're
2 locking them out.
3 It is true, your Honor, it could be; the
4 effect could be to discourage. The effect really
5 is to prevent. And that, I suggest, is not the
6 purpose of proxy statements. The purpose of proxy
7 statements is to tell the truth as clearly and
8 unequivocally as you can. And any deviation from
9 that, with all respect, is false and misleading
10 within the language of the cases.
11 THE COURT: All right.
12 MR. GOULD: I think on the showing we would
13 be entitled to preliminary injunctive relief.
14 Now I understand, your Honor, that since we
15 have applied to the court and made our motion there
16 has been a supplemental mailing. In that supple-
17 mental mailing to stockholders there is a reference
18 to the compensation of the Trustees, a reference to
19 the compensation of Whitman & Ransom, there are some
20 other attempts to effect substantive amendations
21 which would cure the defects of the original
22 proxy statement.
23 I have made an effort, your Honor, to find
24 out whether that supplemental mailing really has
25 any substantive effect. I am advised that it was

1 not in the hands of any of the brokers until this
2 morning; that it got into their hands because it
3 was hand delivered by the transfer agent of the
4 company.
5 It will take at least six or seven days
6 before the brokers can get appropriate instructions
7 from the beneficial owners of the stock. So that I
8 don't think that this is an effective way of curing
9 what I urge on the Court, an effective way of curing
10 a defective proxy statement.
11 Now, your Honor said something to me before
12 about a clean sweep, and I answered you perhaps with
13 a degree of glibness that I did not intend.
14 Nobody contemplates a clean sweep of
15 management. We have never suggested that. We have
16 no intention at all, should we succeed in this
17 project, to sweep the management. We do intend to
18 clean sweep of the Board of Directors; in other
19 words, we would substitute a different kind of
20 thing.
21 Now, I think I've said enough to your
22 Honor. I've made clear our position on both things.
23 THE COURT: I think so.
24 MR. GOULD: Let me conclude simply by
25 pointing something out.

1 I do not understand the position of the
2 United States Government in this case. If indeed
3 their position is that they want divestiture, just
4 as quickly as possible then the Fuqua proposal
5 dovetails with their point of view. I will be very
6 happy if they will expose that point of view to
7 your Honor in an appearance here today. I think
8 that's the first important thing.
9 Most important, central to a consideration
10 of this is that the Avis stockholder, the stockholder
11 other than the one represented by the Trustee, has
12 got a right to see this company return to some kind
13 of normalcy. Normalcy does not mean operation by
14 court-appointed officers.
15 As your Honor knows, I have myself functioned
16 in that capacity several times - maybe even many
17 times. It is not a normal statute, a normal posture
18 for a publicly-owned company to be in. And one
19 would think that everybody would bend his efforts
20 to seek a return to normalcy.
21 Now a return to normalcy can only be
22 effected in the peculiar circumstances of this case
23 by treating an offer such as the offer made by
24 Fuqua with care, with reverence, with respect.
25 THE COURT: All right.

1 MR. GOULD: It should be carefully
2 considered, and it cannot be considered on a proxy
3 statement dated May 4th which is admittedly
4 inadequate and requires correction for a meeting
5 next Wednesday.
6 It can't be done that way. It requires a
7 little more attention from this Court and from
8 everybody else.
9 THE COURT: All right.
10 MR. KEISMAN: Does your Honor wish to hear
11 the remaining plaintiff at this time who stands in
12 the same position on the merits seeking injunctive
13 relief?
14 THE COURT: You want to endorse what Mr.
15 Gould has said about the position of the share-
16 holders?
17 MR. KEISMAN: Your Honor, there are a few
18 things I think need to be added - just a few - that
19 I think are germane.
20 THE COURT: You've got a separate lawsuit?
21 MR. KEISMAN: Yes sir. We filed the Miller
22 case and your Honor signed an order to show cause
23 for preliminary injunction on Friday.
24 I'm Eric Keisman of the firm of Wolf,
25 Popper, Ross, Wolf & Jones in New York, attorneys

1 for Dr. Miller, who is the owner since 1974 of
2 a thousand shares of Avis. And, your Honor, we do
3 not intend to belabor or repeat the things that Mr.
4 Gould has said. What he has said about the proxy
5 we endorse.
6 We would like to add something to it.
7 We think the proxy is still misleading, even if the
8 supplementary proxy had been received, even if
9 there was any chance in the world that small
10 stockholders, quite apart from New York brokers,
11 all over the country have had a chance to read,
12 digest and advise their advisors about what to do
13 with it.
14 As your Honor is now aware, the original
15 proxy statement doesn't mention not only the
16 registration statement, but doesn't because it can't
17 represent the possible pendancy of any merger or
18 offer for the securities of Avis.
19 THE COURT: All right.
20 MR. KEISMAN: The supplemental doesn't
21 either, your Honor. The supplemental proxy --
22 THE COURT: Now just a minute, Mr. Keisman.
23 You were going to suggest to the Court that there
24 were other omissions --
25 MR. KEISMAN: Yes, your Honor.

THE COURT: -- than those Mr. Gould talked about.

MR. KEISMAN: I'm discussing now the supplemental proxy, your Honor.

The supplemental proxy doesn't say, your Honor, that Fuqua had already informed Avis --

THE COURT: You're talking about the omission of information about a possible offer from Fuqua?

MR. KEISMAN: Your Honor, not a possible offer.

THE COURT: Well, the offer as outlined here?

MR. KEISMAN: No, your Honor.

On May 16th Fuqua informed Avis that if Proposals 2 and 3 passed, the Fuqua offer would be withdrawn. That is our information.

THE COURT: I see.

MR. KEISMAN: The supplemental proxy dated May 19th --

THE COURT: Now just a minute.

You complain that there was an omission in failing to state that the Fuqua offer had been rejected, or what?

MR. KEISMAN: No, your Honor.

1 THE COURT: I don't understand you.

2 MR. KEISMAN: That the Fuqua offer will be

3 withdrawn if Proposals 2 and 3 pass, if the

4 stockholder meeting is held.

5 THE COURT: I see. All right.

6 MR. KEISMAN: We think that the small

7 stockholder is entitled to have it perfectly clear

8 that Avis management, the Avis Trustee, now know

9 that if they pass 2 and 3 the Fuqua offer is gone.

10 And Mr. Gould correctly couldn't speak to

11 the interests of the outside public stockholder.

12 We think that the outside public stockholder needs

13 and deserves and is entitled to a clearer revelation

14 that if you don't quickly send a telegram revoking

15 your proxy the Fuqua offer is dead, your chance to

16 get the equivalent of $15.50 tax free is dead.

17 THE COURT: All right. That's the omission

18 that you --

19 MR. KEISMAN: We think it is a serious

20 omission.

21 We also suggest that your Honor cannot

22 consider the supplemental proxy as having been

23 effectively disseminated to the public stockholder

24 body. The Federal Rules even presume three days

25 for mailing.

1 Even if it was mailed First Class to the
2 world on the 19th, there has been no time for the
3 stockholder body to receive it and write back and
4 react to it.
5 We respectfully submit it cannot be allowed
6 to validate the proposed meeting or any vote at the
7 proposed meeting.
8 We also suggest that the proxy is still
9 misleading even as supplemented in that it does not
10 tell the public stockholder what the relationship
11 is between the proposed secondary which has been
12 registered but which is not, as we understand it,
13 effective and Proposals 2 and 3.
14 We respectfully suggest, your Honor, that
15 if Proposals 2 and 3 don't pass, if the block is
16 not effected, that there is strong reason to believe
17 that the secondary won't go forward.
18 We also further respectfully suggest that
19 the proxy fails to reveal, because it doesn't deal
20 with it at all, the supplemental proxy doesn't deal
21 with it at all, the probable effect of a present
22 secondary and a later relative dribble out secondary
23 and perhaps still a third upon the market for Avis
24 stock as it compares to the value offered by the
25 Fuqua offer.

1 Now, Mr. Gould has not taken it upon
2 himself, and I can't either, to discuss the
3 economic merits of the Fuqua offer except as a
4 lawyer might understand them.
5 But, your Honor, we do think that if your
6 Honor is at all in doubt that testimony should be
7 heard or called for, not only as to whether or not
8 this is valud under 368(b) --
9 THE COURT: Now wait a minute.
10 You're complaining or you're arguing that
11 there is not a sufficient notice to shareholders
12 of the Trustee's present intention to divest his
13 holdings in a series of offerings?
14 MR. KEISMAN: No, your Honor, we're not
15 saying that there isn't notice that a series of
16 offerings is intended.
17 We're saying once the Avis Trustee knows of
18 a potential other offer, that the stockholders of
19 Avis are entitled, prior to making a decision,
20 whether they shall vote for 2 and 3 and therefore
21 block tender offers, merger offers, or what have
22 you; or whether they shall vote against it and hear
23 such offers; that they're entitled to have all the
24 facts on which they might make a judgment as to
25 which way out is best.

1 THE COURT: I see. All right.

2 MR. KEISMAN: And certainly since May 16th
3 they've been entitled to that information. They
4 certainly didn't get it from the supplemental proxy.

5 THE COURT: You mean not only are they
6 entitled to know what the Trustee proposes to do
7 with respect to divestiture, but he should support
8 that by a brief containing opinions of reputable
9 authority?

10 MR. KEISMAN: Not necessarily a brief,
11 your Honor. But once the Trustee knew that, for
12 example, Fuqua was a bidder, then as one sees
13 generally in merger proxies perhaps the stock-
14 holder from May 16th forward was entitled to some
15 serious information about Fuqua from the Avis
16 Trustee before the Avis stockholder was required
17 to make a decision.

18 And, your Honor, this is all the more
19 reason why the meeting scheduled for the 25th
20 should not be allowed to effectuate the proposed
21 By-law changes.

22 We, of course, have argued in our papers
23 that the meeting should not be allowed to take
24 place. Whether or not your Honor is willing to go
25 that far because of these proxy violations - and we

1 think there is good ground to believe that one
2 should - a secondary form of relief which could
3 achieve the same result would be for your Honor to
4 enjoin the filing and consummation of any ballots
5 cast or the consummation of any changes in the
6 by-law purported to be made by such votes until
7 your Honor could determine the merits.
8 THE COURT: All right.
9 MR. KEISMAN: And, your Honor, we suggest
10 there is irreparable harm here to the public
11 stockholders.
12 Now, again, Mr. Gould has addressed himself
13 to the reasons why --
14 THE COURT: You mean because you won't get
15 a tax-free offer?
16 MR. KEISMAN: That could be a substantial
17 problem, your Honor, substantial irreparable harm
18 in terms of today's present capital gains rate and
19 in terms of the present holding period.
20 THE COURT: Have you looked into --
21 MR. KEISMAN: I'm not a tax expert, your
22 Honor, but I know that tax-free exchanges often have
23 advantages. I know that as a lawyer.
24 THE COURT: Apart from the price there's
25 another problem. Okay.

1 MR. KEISMAN: And there is also irreparable
2 harm in that this will now finally determine the way
3 the rest of the Avis stock becomes public stock,
4 will finally determine that in fact the float should
5 be increased by 30 or 40 percent now, and by another
6 20 or 30 percent soon.
7 It will finally determine that the market
8 should continue to be overhung by even a shrunken
9 control block, it will finally determine a lot of
10 things that affect open market purchasers and
11 present holders of Avis. Unless your Honor grants
12 some relief --
13 THE COURT: Just one question.
14 How long has your client held his stock?
15 MR. KEISMAN: Since 1974, your Honor.
16 THE COURT: 1974?
17 MR. KEISMAN: Yes, your Honor. I don't
18 have the date.
19 THE COURT: Well, the float was there
20 overhanging the market when he bought, I guess.
21 MR. KEISMAN: Yes, your Honor. But the
22 Fuqua offer is one way where he might get the
23 advantage and the public stockholder body might
24 get the advantage of a relatively non-float
25 affected offer, an offer desring all the stock.

1 If another two million shares come out in
2 June and there are another 1.7 million waiting
3 sometime, that could have a substantial effect,
4 could have a substantial effect on market price.
5 All we're saying, your Honor, is that
6 there is a fiduciary duty on the part of the
7 Trustee, the court-appointed Trustee, to give
8 serious consideration to the best interests. Because
9 he holds a control block. Serious consideration.
10 THE COURT: Now this is a fiduciary duty
11 that arises out of the fact --
12 MR. KEISMAN: Of control.
13 THE COURT: -- that he's a majority share-
14 holder.
15 MR. KEISMAN: Of control, your Honor.
16 Give serious consideration while he's finding his
17 own best way out under this Court's orders to
18 protecting the interests of the large public float.
19 There is such a duty, your Honor. And the
20 determination to go ahead with the secondary --
21 THE COURT: Let me ask you a question.
22 MR. KEISMAN: Yes, your Honor.
23 THE COURT: A control should call for a
24 premium, shouldn't it?
25 MR. KEISMAN: It often does, your Honor,

1 yes.

2 THE COURT: Well, would you suggest what

3 the premium would be if he takes $15.50 - how much

4 of that is premium?

5 MR. KEISMAN: Your Honor, I have no way of

6 knowing. But the offer presently before us, as

7 I understand it, Fuqua says "an offer of no

8 less value". It doesn't --

9 THE COURT: Your position would be that if

10 you got less that would measure the premium that

11 the Trustee got and that the Trustee then should

12 share that premium with your shareholders.

13 MR. KEISMAN: Your Honor, I don't know if I

14 can reach that point at this point. The cases go

15 in various direction on what is an improper sale of

16 control premium.

17 But we have an offer before us apparently,

18 your Honor, that says they're going to give the

19 public equal value as they give the Trustee.

20 Your Honor, I think, has just mentioned a

21 very important point. There might be another tender

22 offer for control which wouldn't give the public the

23 same as the price at which it sought the control

24 block. This may be the most equitable opportunity

25 the public will have.

1 We can't speak to that. As Mr. Gould said,
2 there might be substantial competition if your
3 Honor will allow that competition.
4 THE COURT: Well, it's a fascinating
5 business, tender offers.
6 MR. KEISMAN: Fascinating and a fairly
7 serious business for the public at that time.
8 THE COURT: Thank you, Mr. Keisman.
9 MR. KEISMAN: Thank you, your Honor.
10 MR. SULLIVAN: May it please the Court, I
11 shall confine my remarks to reasons why Fuqua
12 should not be permitted to intervene in this
13 proceeding.
14 Mr. Topkis of Judge Rifkind's firm will
15 comment on the proxy statement and other matters
16 relating to the Avis Corporation itself as it's
17 involved in this proceeding.
18 Now, Mr. Gould has stated that there's no
19 question in his mind that an offer to purchase the
20 outstanding shares of Avis stock held by the Trustee
21 brings him within the purview of Rule 24 of the
22 Federal Rules.
23 He has not indicated to your Honor that
24 the decisions have said that you must have a
25 substantial interest. And the interest must be one

1 that is in existence, must be direct and not
2 contingent.
3 Now Mr. Gould has stated on behalf of Fuqua
4 that they reserve the right to withdraw their offer
5 if the meeting is held on Wednesday and the
6 proposed amendments to the Charter and By-laws are
7 passed.
8 Now that is hardly an interest in the Avis
9 matter that's now before your Honor. In our brief
10 we cite a case which I'm not going to review for you,
11 but it's the Old Colony Trust case against Penrose
12 Industries.
13 THE COURT: Yes.
14 MR. SULLIVAN: Now, in their brief the
15 Fuqua attorneys cite the case of Cascade Natural
16 Gas against El Paso Natural Gas. That was a case
17 in which the El Paso was under an order to get rid
18 of a good many of its gas properties out in the
19 West --
20 THE COURT: I'm familiar with that case.
21 MR. SULLIVAN: All right.
22 Let me read to you what the Third Circuit
23 said with respect to that case: "Appellants
24 place great reliance upon the recent opinion of
25 the United States Supreme Court interpreting

1 Federal Rule 24(a)(2) in the case of Cascade
2 Natural Gas versus El Paso Natural Gas. There the
3 court said the interests of the parties permitted
4 to intervene therein differ so materially from that
5 for which Appellants seek recognition here as to
6 require no further elaboration."
7 In other words, in that case on which
8 Fuqua relies there was a great public interest in
9 how the gas was going to be distributed or whether
10 or not would be distributed by responsible companies.
11 Therefore there is nothing that I can add
12 to the substantial interest point which Fuqua has
13 not demonstrated here, which they must in order to
14 bring it under Rule 24.
15 I have considerable difficulty as to the
16 Court's jurisdiction in this matter. There is no
17 federal claim raised in the complaint, there is no
18 constitutional question raised, there is no federal
19 statutory question raised. And so I raise that
20 point for your Honor to consider, as to whether
21 or not you do have any jurisdiction here.
22 I recognize that you've been with this
23 problem for a long time and that may be a reason
24 why you want to see it through to the end, that is,
25 the divestiture of the Avis stock held by the
Trustee. But apart from that --

1 THE COURT: It isn't what I want to do.
2 I've got a bear by the tail.
3 MR. SULLIVAN: You're obliged to do.
4 THE COURT: Right.
5 MR. SULLIVAN: But apart from that, there is
6 no federal question here and there is no statutory
7 question or constitutional question.
8 Now normally in asking for injunctive relief
9 a plaintiff must make a much more attractive showing
10 than what the Fuqua people have made.
11 Injunctive relief is very extraordinary
12 relief. And it seems to me that I can dispose of
13 that point; namely, that they should not ibtain
14 an injunction, by referring to one of the criteria,
15 one of the four major criteria - and that is that
16 the petitioner must show that without the relief
17 he will show irreparable harm.
18 Well, if he doesn't get an injunction here
19 he's in the same position that he was before he
20 filed these lawsuits. There's no irreparable harm
21 he can point to. He can point to the possibility
22 of gain, but there's certainly no irreparable harm.
23 And the other criteria are equally impor-
24 tant, but I won't take the Court's time because we
25 have briefed them.

1 THE COURT: Yes.

2 MR. SULLIVAN: Now the final point that I
3 would like to make refers to a comment that Mr.
4 Gould made when he said that Fuqua was looking into
5 the Avis situation seven or eight months ago.

6 It's interesting that one of the partners
7 of Mr. Gould telephoned a Mr. O'Brien of my firm on
8 December 14, 1976, stating that an unnamed client
9 of that firm was interested in purchasing the
10 Trustee's shares.

11 Now, we assume, or it's entirely appropriate
12 to believe that Mr. Constance of the Gould firm was
13 probably talking about the Fuqua interest in Avis,
14 particularly in light of the fact that Mr. Gould
15 said seven or eight months ago they were discussing
16 the possibility of moving into the Avis picture.

17 Now if they knew seven or eight months ago
18 that they were interested, I think they're barred
19 by laches as a matter of equity. And the mere fact--

20 THE COURT: Did you check to see when Mr.
21 Prather bought his single share?

22 MR. SULLIVAN: I did not, your Honor. I'm
23 sorry.

24 Perhaps somebody here can supply you with
25 that information.

1 THE COURT: I was just curious.

2 MR. GOULD: Your Honor, it's 1972.

3 THE COURT: 1972.

4 MR. GOULD: June, 1972.

5 MR. SULLIVAN: But the Fuqua organization

6 sat idly for five or six months, or perhaps longer,

7 until they saw the proxy statement.

8 Well, that's not a sufficient reason for them

9 to come in now and upset the orderly procedure of

10 the Trustee in not only having this corporation

11 run on a very profitable basis, but also his orderly

12 procedure to dispose of this remaining stock

13 through public offerings.

14 I think the Fuqua application should be

15 dismissed.

16 THE COURT: Thank you, Mr. Sullivan.

17 Mr. Topkis.

18 MR. TOPKIS: If your Honor please, I'll

19 try to be very brief. And I'm aided in my quest

20 for brevity, your Honor, by the relative novelty

21 of this proceeding.

22 Your Honor spoke earlier of this Court

23 being famed as a court of first impression.

24 THE COURT: But only because Mr. Gould

25 wanted to identify this case as a sport.

1 MR. TOPKIS: Well, I think it is a sport.
2 I would agree with that. Not in the sense of
3 mutation, but if I may suggest an analogy to this
4 Court.
5 I've read the complaint and among other
6 shortcomings that I find in the complaint is the
7 lack of a cause of action. I don't know what Mr.
8 Fuqua's basic grievance is here, but one thing I
9 am sure of, and that is that it is one never before
10 seen in any court of justice.
11 He is a little bit something like this:
12 Dick and Jane fall in love with each other and
13 they decide to get married. They get their parents'
14 consent and the engagement is announced. It
15 appears in the newspapers, the caterer is hired, a
16 deposit is paid and the church is reserved for
17 Wednesday.
18 All of a sudden J.B. Fuqua shows up saying,
19 "I want to propose to the bride and I want the
20 wedding adjourned until she has an opportunity to
21 consider my offer. And if you won't adjourn the
22 wedding, then I'll withdraw the offer".
23 Now what in the name of heaven kind of game
24 is this? It may be appropriate for levity, but
25 for jurisprudence I think it has its failings.

1 I've been assigned the task specifically
2 of focusing on the registration statement and its
3 alleged shortcomings. And that, too, is an
4 exercise in Alice in Wonderland.
5 Apparently, if I listen to my friends,
6 our basic problem is that in our registration
7 statement we engaged in fact and not in prophesy.
8 In our registration statement issued May 4 we did
9 not inform the public that on May 16th Mr. Fuqua
10 would announce an offer. Mea culpa, or my partner's
11 culpa. We don't write registration statements that
12 way.
13 Another terrible sin that we committed: on
14 May 4th we did not reveal the fact that on May 16th
15 we would file a registration statement.
16 Of course not. On May 4th we hadn't decided
17 to file the registration statement. Sure, we were
18 thinking about it, and that we told the world in
19 the proxy material. That is to say we told them
20 that the Trustee was bent on disposing of the
21 stock in orderly fashion.
22 If we had said more than that, if we had
23 predicted, prophesied, then we would really be in
24 the ring.
25 Another terrible sin that we committed I
am told is that we said "could" and we should have

1 said "will". I'm sorry, again, where a lawyer's
2 caution, if you will.
3 I'm sure that if we had said "will" they
4 would have been on our necks because we went too
5 far; we should only have said "could".
6 And finally there is the terrible sin
7 involved in failing to proclaim to the world that
8 the Trustee gets paid for his work, and so do his
9 lawyers. Well, if those were facts utterly unknown
10 to the shareholder public, then the shareholder
11 public believes in free lunch.
12 These fees, after all, as your Honor pointed
13 out, are paid by ITT, they are approved by the
14 court, they are matters of public record and they
15 are inevitable.
16 Now any one of those factors I should think
17 should eliminate them from serious consideration
18 as matters that require --
19 THE COURT: You mean it's graven in stone
20 that the trustees who are performing a public service
21 have to get paid?
22 MR. TOPKIS: It's not graven in stone,
23 your Honor. I just think that the chances are as
24 good that trustees are paid as that all the lawyers
25 here in court are probably being compensated for

1 their time - with the exception of one that I can
2 think of who is probably here on a hope.
3 But few trustees operate on hope.
4 Your Honor, I don't think that -- again
5 we're dealing with matters of first impression. This
6 can't be taken seriously. But in any event, we've
7 corrected it all. "Corrected". There was nothing
8 wrong to begin with.
9 And Mr. Keisman shows up and says that we
10 should have advised the shareholders in our supplement
11 that Fuqua threatened to withdraw his offer unless, I
12 don't know, he picks up his marbles and goes away if
13 we voted for the propositions that he didn't like.
14 If that's Mr. Keisman's grievance, Mr.
15 Keisman should go home, because we told the share-
16 holders that in the supplement. And let me read it,
17 if I may:
18 "Fuqua's proposal to the Trustee stated
19 that Fuqua would not be interested in purchasing the
20 Trustee's shares should the stockholders of the
21 Company approve at the annual meeting the amendments
22 to the company's certificate of incorporation and
23 By-laws set forth in the proxy statement previously
24 mailed to stockholders".
25 So I'm at a loss to understand Mr. Keisman.

1 Now, Mr. Gould says that the stockholders
2 should have more time to brood over Mr. Fuqua's
3 proposal. He says we didn't send out our supple-
4 mentary material until May 19th, when after all we
5 got his offer on May 17th.
6 Who's doing was this problem - ours or
7 Fuqua's? It was Fuqua who knew that he was
8 interested in this corporation back in 1972 when he
9 put up Prather to buying one share so he could get
10 all the dope on it as the years went by.
11 It was Fuqua who last December had his
12 counsel contact Whitman-Ransom and talk about
13 making an offer for the Trustee's shares.
14 And it was Fuqua who waited until May 17,
15 a week before the meeting, to deliver his offer
16 finally.
17 Then he complains because we didn't get our
18 announcement out of his offer until May 19th.
19 I'm reminded of that ancient definition of
20 chutzpah. I won't bother the Court with it.
21 If Fuqua can get a meeting adjourned on
22 this record I can envisage no circumstances in
23 which a raider cannot hold up the orderly processes
24 of a corporation.
25 Judge Weinfeld's decision, and the others

1 cited in our brief, make it clear, I think,
2 beyond the slightest question that the courts of
3 this nation have unanimously set their face
4 against such raider tactics.
5 Just one final word of summation, your Honor.
6 How is Fuqua hurt here, really? He can't get
7 his offer considered, he says. Of course he can.
8 If our proposals go through the only thing that
9 will be required will be that any proposal that is
10 submitted for the Trustee's shares will have to
11 pass muster with two-thirds of the corporation's
12 independently selected directors.
13 What's so terrible about that for a corpo-
14 ration which is in a transition stage, which is
15 moving out from under the supervision of a court
16 to the free land of public existence?
17 If Mr. Fuqua is so afraid of having two-
18 thirds of these disinterested directors pass on his
19 offer, then I suspect that there must be something
20 wrong with his offer.
21 In any event, that is surely no basis for
22 holding up our meeting. Delay, after all, won't
23 change the situation. Their case, which they
24 don't have, won't be tried. There's nothing to try.
25 So there's no need for delay.

1 But one thing would happen if this meeting
2 were adjourned: the word would get out that again
3 Avis stubbed its toe. This corporation that has
4 been plagued with misery for so long would have
5 lightning strike again. Employee morale would be
6 interfered with, I think we can forecast with
7 certainty.
8 Our licensees would be anxious. There is
9 an affidavit to that effect before your Honor.
10 But most basic, the sad effect would be that
11 the orderly progress of Avis toward independent
12 standing as a self-respecting, self-sustaining
13 corporation would be interfered with, for no reason
14 whatsoever except the greed of some sharpshooter
15 who thinks he sees a bargain. I don't think that's
16 a basis for this Court to act upon it.
17 Thank you, your Honor.
18 THE COURT: Thank you, Mr. Topkis.
19 MR. GOULD: If your Honor has no one else
20 to be heard --
21 MR. JAFFE: Your Honor, the United States
22 would like to be heard.
23 Your Honor, I am Matthew E. Jaffe represent-
24 ing the United States.
25 I would like to present my two colleagues

1 who are here with me: Betsy Wurzburg and Ruth
2 Dicker.
3 THE COURT: All right, Mr. Jaffe.
4 MR. JAFFE: May it please the Court, the
5 United States did not learn of Fuqua's offer until
6 last Tuesday, and we did not learn of Fuqua's
7 proposal to intervene into our case until last
8 Thursday, and we did not receive a copy of their
9 memorandum supporting their intervention until
10 Friday evening.
11 As to Fuqua's motion to intervene in this
12 action, we oppose that motion on the ground that
13 they have no legal right to intervene because it has
14 no cognizable interest under Rule 24(a) of the
15 Federal Rules of Civil Procedure.
16 We suggest that to conclude otherwise would
17 enable any potential purchaser in an antitrust suit
18 involving divestiture to claim a right of inter-
19 vention. Such a conclusion would result in great
20 confusion and prolongation of antitrust litigation.
21 Our reasons for opposition are set forth
22 more fully in our response to Fuqua's motion to
23 intervene which we filed with the Court this
24 morning. We do have no objection to the Court
25 hearing the views of Fuqua as amicus curiae

1 THE COURT: You heard them.

2 MR. JAFFE: I would like to take this
3 opportunity to state the position of the United
4 States regarding divestiture of Avis. That position
5 is that the divestiture of Avis to a qualified
6 purchaser in a manner which will result in its
7 being a viable competitor in the rental car business
8 should take place as soon as possible.

9 Such divestiture may be carried out by
10 any method, as was indicated in the original final
11 judgment. Any method would include, but not be
12 limited to, a sale of stock to the public by means
13 of a public offering or a series of public offering,
14 a sale for private purchaser, or a spinoff to ITT
15 shareholders.

16 To the extent that Fuqua represents a
17 possible means of divestiture we feel that they
18 should be heard as amicus. It is not our position,
19 and never has been, that divestiture must or should
20 be accomplished by any particular method.

21 We are aware of Trustee Order Number 3 in
22 which this Court directed and authorized the Trus-
23 tee to begin disposition of Avis by way of a
24 series of public offerings.

25 We do not believe this order requires a

1 Trustee to forsake other methods of divestiture
2 if such other methods appear to become more expe-
3 dient.
4 Because it now appears that a private
5 sale may result in an earlier completion of dives-
6 titure of Avis and spare all involved from a
7 prolonged and perhaps uncertain divestiture process,
8 we urge that the Court instruct the Trustee to
9 consider private offers and not to turn all such
10 offers away out of hand.
11 We see no reason why the Trustee cannot
12 discuss a private sale even while he prepares for
13 a public sale. If such private sale is negotiated,
14 then the parties could consummate that sale.
15 If no such sale is negotiated, the Trustee
16 would be free to proceed with the public sale.
17 It is our position that the option of making
18 a private sale should not be closed. Any action
19 by the Trustee which would work at odds toward
20 achieving divestiture by any particular method,
21 such as a private sale, ought not be taken without
22 good cause.
23 To the extent that the adoption of Pro-
24 posals 2 and 3 set forth in the May 4th Avis
25 proxy statement might lessen the ability to make

1 a private sale, we urge that the Trustee not vote
2 for the adoption of such proposals.
3 THE COURT: What was your opening statement
4 that you read there, something about a viable unit?
5 MR. JAFFE: We feel that Avis should be
6 divested by any method which would result in its
7 being a viable entity in the rental car business.
8 THE COURT: All right.
9 MR. JAFFE: Thank you, your Honor.
10 MR. GOULD: Would your Honor give me
11 about two or three minutes more? I want to reply.
12 I'll be very brief.
13 THE COURT: All right.
14 MR. GOULD: First of all, I'm very dis-
15 appointed to hear Mr. Topkis refer to my clients
16 in this case as raiders.
17 They are not raiders. I suppose a raider
18 is anybody who wants to take over a public company
19 that's not represented by Mr. Topkis' firm.
20 THE COURT: I mean if this is going to be
21 the character of your response, I'm not going to
22 listen to you for two or three minutes.
23 If you've got something constructive--
24 MR. GOULD: I do have something to say.
25 THE COURT: All right.

1 MR. GOULD: I can't match the wit that was
2 employed, but I can deal with the veracity.
3 I copied down what Mr. Topkis told your
4 Honor. He said of course, we didn't say on May
5 4th that we were going to do a registration
6 statement because - and this is the quote - "We
7 had not decided to file a registration statement".
8 I direct your Honor's attention to Para-
9 graph 27 of Mr. Smith's affidavit in opposition to
10 our motion in which he says that at a meeting of
11 security analysts on March 24th, 1977, it was
12 announced that the Trustee was adhering to his plan
13 for the public distribution of the shares and at
14 his next offering approximately one half of the
15 shares would be in June, 1977, provided that
16 market conditions were favorable.
17 So I would have to attribute that statement
18 of Mr. Topkis to the enthusiasm of advocacy.
19 Next, some reference was made by Mr.
20 Sullivan to the Old Colony case. I simply want
21 to direct your Honor's attention to the fact that in
22 the Old Colony case the court, faced with a
23 situation not very different from what we have
24 here from a technical point of view, concluded
25 that it was appropriate and directed that the

1 proposed intervenor's offer had to be considered.

2 Finally, I would like to make a practical

3 suggestion to the Court because I am mindful of the

4 problems which we have posed to your Honor and of the

5 circumstances in which they have been posed; and

6 that is that we resort to a device which has often

7 been used in these situations.

8 I'm not oblivious to the fact that a vast

9 machinery has been set in motion to hold a stockholders

10 meeting, to get proxies out and get them in, and that

11 fellows are out beating the bushes to get them in,

12 and it costs money and it's other people's money.

13 And I would suggest that at the very least

14 what should come out of this proceeding this morning,

15 that is, if your Honor feels if there is any merit

16 whatever in our position and in the position advanced

17 in behalf of the stockholders - a position which

18 acquires a little more merit since the Government has

19 spoken now - I would suggest that one way of dealing

20 with it is that they hold their meeting on Wednesday,

21 but they don't implement anything, and we could

22 probably work out a stipulation which would make it

23 possible for the Court to get a reasonable time in

24 which to act with respect to something like that.

25 Now that's a practical way of dealing with

1 this. In view of the problems that have been posed
2 to your Honor this morning, I think it requires
3 careful attention. I know it can't get that kind of
4 careful attention between now and Wednesday morning.
5 I know that we have not been able to do our job
6 properly and I don't think we can ask a Federal Judge
7 to do their job properly --
8 THE COURT: After you spoil a week-end,
9 then you come in and you say you figured out a way
10 that we didn't have to go through all this.
11 MR. GOULD: Well, I hope we didn't spoil
12 your Honor's week-end. But I assure you that to the
13 extent that it was spoiled mine was also spoiled.
14 I would not have made this proposal, your
15 Honor, but I heard what the Government said. I think
16 the critical thing that was made in the Government's
17 exposition is that they urge the Trustee not to vote
18 in favor of these resolutions. That's a voice that
19 ought to be heard.
20 Now that's much more interesting to the
21 stockholders perhaps than it is to Fuqua, but it
22 ought to be heard. And our voice ought to be heard.
23 And maybe we ought to get down to the economics of
24 this thing and what is right for the faceless people.
25 It's all very well for us as lawyers to

interpret the nuances of this proxy statement. For example, it was said to your Honor everybody knows that trustees get paid, in response to a question your Honor put.

I wonder if the laity know the trustees get paid. I don't know. But I'd like to hear something about it. And there are a lot of other things about this case that maybe ought to be laid out.

So what I urge on your Honor is if your Honor feels that you don't want to go as far as to enjoin this meeting until you wrestle with the substantive problems, let them hold their meeting, let's have a hearing in the intervening period, and then and only then, on the further order of this Court, implement what's done at the meeting.

MR. KEISMAN: May I have thirty seconds in rebuttal?

THE COURT: Who are you going to rebut, me?

MR. GOULD: I guess me.

MR. KEISMAN: I speak for the same relief, but I just wanted to make the point that in the stockholders suit in the Miller action no one has questioned your Honor's jurisdiction over that case wherein the same relief is sought.

And if there is any question whether the Fuqua plaintiff has standing, there is no question but plaintiff Miller has standing as a separate action and a separate motion for an injunction before your Honor which could be a wholly valid vehicle for the carving out of such relief as your Honor thinks is merited here.

MR. SULLIVAN: Just a few brief remarks, your Honor, in reply to the representative of the Department of Justice.

While I realize that you know much more about Trustee Order Number 3 and Trustee Order Number 5 than I do, I must bring to your attention that the Department of Justice did not object to either of those orders at the time they were entered.

But they come here today at this late hour and object to the trustee voting his stock in favor of Propositions 2 and 3 of the proxy statement.

They, like Fuqua, are also a little late in the day, so far as the stockholders ofthis corporation are concerned.

THE COURT: All right.

I tell you what I'm going to do. I'm not sure I understand what Mr. Gould is talking about when he says hold the meeting, but not implement anything.

But I'll give the principal, or at least counsel here a chance to explore that and we will resume at two o'clock.

I have another matter. I could either stay here for another half hour now or come back at two and utilize the half hour to finish what we have started here this morning.

As I say, I'm not sure what Mr. Gould means when he says hold the meeting, but not implement anything.

I'll find out about that at two o'clock, I hope. Maybe even ten minutes to two I'll be in chambers. I should be back from lunch.

So with that, we will recess until two o'clock.

(Luncheon Recess)

HOBART GOOD
MERANSANDLE
COURT REPORTERS

AFTERNOON SESSION

MR. GOULD: If your Honor please, is it appropriate for me to address the Court? Do you want to hear from me first?

THE COURT: About what?

MR. GOULD: About this proposal that we were discussing.

THE COURT: Was it accepted?

MR. GOULD: No, it's not accepted.

THE COURT: Well, then there's no sense in hearing about it.

MR. GOULD: Well, your Honor said you didn't understand what I meant by it.

THE COURT: I guess I understand now.

MR. GOULD: Thank you, your Honor.

THE COURT: I've had a chance to reflect upon it somewhat.

Yes, Mr. Jaffe?

MR. JAFFE: Your Honor, I would like to clarify two points on the Government's position, if I may.

May it please the Court, we would like to emphasize two points to the Court regarding our position.

1 First, the position of the United States
2 is the divestiture of Avis to a qualified purchaser
3 in a manner which will result in its being a viable
4 competitor in the rental car business should take
5 place as quickly as possible. The divestiture may
6 be carried out by any method. We express no preference
7 as to which method.
8 We do feel that all avenues by which to
9 accomplish the divestiture should remain open.
10 Therefore, if the Court finds that the adoption of
11 Proposals 2 and 3 as set forth in the May 4th proxy
12 statement substantially foreclose a method of
13 divestiture, the United States is opposed to the
14 adoption of such measures.
15 Second, we want to make it clear to this
16 Court that the United States is not taking any
17 position at this point as to any particular purchaser
18 or transaction.
19 That concludes my statement, your Honor.
20 THE COURT: All right, Mr. Jaffe. Thank
21 you.
22 MR. SULLIVAN: May I comment briefly, your
23 Honor?
24 It has been said here today that a vote in
25 favor of Propositions 2 and 3 will prevent a tender

1 offer. That simply is not true. Many corporations
2 with provisions similar to these have had tender
3 offers made after the provisions were adopted by the
4 corporation and those corporations were taken over by
5 tender offer or merger.
6 Now with respect to the position just
7 stated by the Department of Justice, Mr. Smith now
8 holds 47 percent of the Avis stock and through
9 another public offering with which you are familiar
10 he will own 22 percent. That, to me, means that there
11 are very decisive steps being taken to have him
12 divest himself of all Avis stock, but in a manner
13 under which he, as Trustee, carries out his duties
14 to the stockholders who have purchased stock previously
15 from ITT, and those who have purchased previously
16 from him will be protected and have a viable corpora-
17 tion remaining when all of the stock has been sold.
18 To sell it in block to a company like
19 Fuqua would, in the Trustee's opinion, be very unwise
20 and would be unfair to the present stockholders.
21 Finally, any delay with respect to the
22 acting upon the provisions that will be before the
23 meeting on Wednesday and implementing those would
24 probably cause the Trustee to be required to withdraw
25 the registration statement now pending for the sale of

1 two million shares. And that would be, in our
2 judgment, a catastrophe to the viability of the Avis
3 Corporation in the future.
4 Thank you.
5 MR. TOPKIS: Could I have a final word,
6 your Honor? I'm sorry.
7 THE COURT: Final words.
8 MR. TOPKIS: I promise it will be for me,
9 at least.
10 THE COURT: All right.
11 MR. TOPKIS: Just these thoughts, your
12 Honor.
13 First, in light of the Department of
14 Justice's comment, I would like to make it very clear
15 that adoption of these proposals which we hope to
16 vote on on Wednesday will not preclude any offers
17 for the Trustee's shares from coming in, nor will
18 it preclude their being considered.
19 It just means that an offer aimed at
20 merger will have to be good enough to pass muster
21 with two-thirds of the independent directors who
22 were selected and voted upon in accordance with the
23 procedures established by this Court.
24 It doesn't even foreclose Mr. Fuqua. He
25 can continue to make his offer.

He says he'll pack up his marbles and go away. But he can come back and he'll be just as welcome as he was initially.

And I might say --

THE COURT: Listen, you have to let the Court in on these asides that provoke all the laughter. What was it? Did you hear it?

MR. GOULD: I think I was the guilty one. What provoked the laughter was Mr. Topkis' statement that Mr. Fuqua would then be as welcome as he is now. And we all concur in that point of view.

THE COURT: All right.

MR. TOPKIS: There need be no limitation whatsoever on private bidding. In fact, while we were out at lunch Professor Shapiro and Mr. Troub both, in collegiate assembly, advised me that there have been a number of recent occasions when corporations with parallel restricted by-laws and certificates of incorporation were the scene of very bitter private contests.

The names that were mentioned were Microdot, Copperweld Steel, Desiret Pharmacal and Gray Tool. They came to mind very, very quickly.

So that the Department of Justice's desire that private bids come in and be considered to the end that there be speedy disposition of these shares can be accomplished without the slightest hindrance by the provisions that we seek to have adopted. All that will be accomplished is that nobody will be able, by buying 47 percent of the stock and picking up another 3 percent perhaps over in the public market, be able to frustrate the desires of 49/52nd of the public shareholders of this company.

That's what we're out to do. We're out to get them protection, the protection that a vote of two-thirds of these independent directors will secure to them.

Thank you very much.

MR. KEISMAN: Your Honor, may the public stockholders --

THE COURT: No, I'm sorry. We're not going on ad infinitum here.

As it is, this case has come up under constraints imposing time pressures on the Court and on everybody else who is involved, just because these lawsuits were commenced only this past week and a week before a scheduled shareholders meeting of the stockholders of Avis.

I have three complaints before me on an order to show cause: in Prather and Avis, Miller and Avis, and I have one from Fuqua to intervene in the case of United States against ITT, which is the matter presently pending in this Court requiring divestiture by ITT of its stock in Avis.

The order to show cause of Prather and Miller asks for a preliminary injunction restraining the Trustee Smith and Avis from voting shares at the meeting of May 25th, or soliciting proxies with respect thereto, and restraining Avis from holding the meeting of May 25th until the allegedly material misrepresentations and omissions in the proxy statement for said meeting are corrected.

The Fuqua show cause asks for similar relief, but in addition requests that it be permitted to intervene in U.S.A. versus ITT.

Now, there is some interrelationship in these actions and some overlap in the presentation, but I shall endeavor to sort out the issues and deal with them as they relate to each of these cases.

Jurisdiction in the Prather and Miller

cases is predicated on Section 27 of the Securities Exchange Act of 1934. I will talk about the possible basis for jurisdiction in Fuqua's case a little later.

Now, the Prather and Count One of the Miller shareholders suit allege violations of 14(a) of the '34 Act and Rule 14(a)-(9). According to Avis, Prather is a vice president of Fuqua and while his is not a class action it is, I suppose, conceivable that his interest as a shareholder and those of Fuqua as a purchaser might diverge and create a conflict for joint representation.

There has been no discussion about that. I suppose the shareholders have one interest and Fuqua has another.

Argument might be made, and I suppose Mr. Gould would make it, that what's good for Fuqua is good for the shareholders and, therefore, there is no conflict. But, at any rate, there is a point that may occur to someone and I am reluctant to overlook making mention of it.

Now, Miller also asks for class action status. Well, those are the cases. So discussing first the question of the proxy statement, Rule

1 14(a)-(9) provides, "No solicitation subject to
2 this regulation shall be made by means of any
3 proxy statement, form of proxy, notice of meeting
4 or other communication, written or oral, containing
5 any statement which at the time and in the light
6 of the circumstances under which it is made is
7 false or misleading with respect to any material
8 fact or which omits to state any material fact
9 necessary in order to make the statements therein
10 not false or misleading or necessary to correct
11 any statement in any earlier communication with
12 respect to the solicitation of a proxy for the same
13 meeting or subject matter which has become false
14 or misleading".
15 So that's a statement of the law that
16 we are concerned with.
17 Now, Prather and Miller are concerned
18 with two particular items on the May 25th agenda
19 as set forth in the proxy statement. And Item 2
20 on the agenda is a proposal to amend the By-laws
21 to provide for a staggered Board of Directors --
22 staggered terms, I guess, of Board of Directors --
23 to provide that Directors may be removed for cause
24 only, to increase the number of Directors necessary
25 to make a quorum, and to amend the certificate of

1 incorporation to require a special stockholder
2 vote to change the above By-law.
3 Item 3 is a proposal to amend the
4 certificate to require special Director or share-
5 holder votes for mergers and consolidations, and
6 for the repeal of that provision.
7 Now, Prather and Miller, supported at
8 least as amicus by Fuqua, allege that the proxy
9 statement is misleading in that it misrepresents
10 or omits certain material facts within the defini-
11 tion. First, that the statement does not disclose
12 the Fuqua offer to the Trustee.
13 Now, this offer was dated May 16th, but
14 received by the Trustee late on May 17th. It
15 offers $15.50 per share to the Trustee for the
16 shares of stock of Avis which he now holds as
17 Trustee - some 47 percent of the outstanding stock.
18 If permitted to purchase the Trustee's
19 shares, Fuqua states it will offer the public
20 shareholders a tax-free stock exchange at the
21 equivalent price paid by the Trustee. Just when
22 and just what form this offer will take has not
23 been explained anywhere, although counsel say that
24 they know a way of doing that under the provisions
25 of the Internal Revenue Code.

1 The proxy, in fact, states: "Neither
2 the Company nor the Trustee is aware of any
3 pending or proposed transaction that would be
4 affected by the proposed amendments". And the
5 plaintiffs contend that an update is necessary.
6 I suppose the evidence does disclose that
7 at the time this proxy statement was issued the
8 offer had not then been made. So when made it
9 was not false or misleading for failure to include
10 that information. Whether an update is now
11 necessary presents another question.
12 Number 2, the allegation and claim is
13 that the proxy at various points says that the
14 tender offers could be discouraged or deterred.
15 Well, the open, articulated explanation
16 by the Trustee in the proxy statement reveals the
17 purpose of the proposed amendments clearly: to
18 discourage, that it might discourage takeovers,
19 and that it will constructively strengthen present
20 management and give some continuity to an operative
21 program that has been carried on successfully
22 since the Trustee first had an interest in this
23 corporation.
24 According to the plaintiffs, such offers
25 will be discouraged and the Fuqua offer, in

1 particular, will be withdrawn if the changes in
2 the By-laws and certificates are approved.
3 The third point raised or claimed to be
4 an omission or a misstatement is that the proxy
5 fails to disclose that the Trustee on May 17th
6 registered a proposed secondary offering of two
7 million shares of stock. This omission from the
8 May 4th proxy is said to be willful and it is,
9 according to the plaintiffs, a material omission
10 necessary to correct the statement, which is that
11 the Trustee currently intends to dispose of the
12 remaining stock held by him by means of additional
13 public offerings from time to time.
14 This information is said to be particu-
15 larly material, that is, the information omitted,
16 because as the Trustee disposes of his shares
17 Avis becomes a more attractive target for tender
18 offers.
19 And, fourth, the proxy statement does
20 not disclose the interests of the Trustee, or
21 Mr. O'Brien, in discouraging officers to purchase
22 the trust property.
23 This argument is put forth through
24 several allegations: (a) that the compensation of
25 the Trustee is not set out; (b) that the

1 relationship between Smith and O'Brien and Whitman
2 & Ransom, the law firm of which they are members,
3 is not disclosed, that is, that Smith retains his
4 law firm as counsel; and (c) the fact that the
5 Trustee controls the Board is not stated - an
6 omission which is claimed renders the Board's
7 recommendations misleading.
8 Of course, as I pointed out earlier
9 during the course of the colloquy between Court
10 and counsel with respect to this case, the Trustee
11 has said or the statement does reveal that the
12 Trustee "...may be deemed to control the company
13 within the meaning of the '34 Act".
14 Well, as I said, Fuqua makes similar
15 allegation and also seeks to intervene. And the
16 primary relief that Fuqua demands in its under-
17 lying complaint is that the Court amend Trustee
18 Order Number 3 to permit the sale of the trust
19 property to Fuqua.
20 Fuqua asserts if the above items are
21 passed, that is, 2 and 3 in the proposed share-
22 holders meeting, it will withdraw its offer. It
23 contends that the Trustee order should be amended
24 because the Fuqua offer is not subject to the
25 infirmities of prior private purchases in that

1 (1) it offers a price above the market and (2)
2 in cash and (3) it will put an immediate end to an
3 expensive trusteeship.
4 Those items, in the large measure,
5 present issues in common. And I suppose a princi-
6 pal issue is whether the proxy solicitation is
7 misleading; are the misrepresentations and
8 omissions material.
9 The question is whether the information
10 furnished would enable a shareholder with a right
11 to vote to make an informed decision on these
12 questions. And if the failure to disclose the
13 intended registration of the secondary offer is
14 misleading, it is my view that the materiality of
15 that is dubious.
16 The shareholders are aware that the
17 Trustee is disposing of his stock by public
18 offering. And that fact is relevant to their
19 decision on the amendments to discourage tender
20 offers, but the exact date is less material.
21 They've known all along. The Court has
22 known all along. The program for timely or
23 periodic divestiture of part of this stock held
24 by the Trustee is a program that was adopted with
25 the full understanding and participation of the

1 Court.

2 Now, at this point I want to interject

3 something that has not really be dwelt upon in the

4 course of the arguments, but which I think is

5 important.

6 It has been adverted to and it is

7 characterized, I suppose, by the statement of Mr.

8 Pomerantz that this case is a sport.

9 MR. GOULD: I think you are referring

10 to Mr. Gould.

11 THE COURT: On my knees I ask forgiveness.

12 MR. GOULD: The first time that I can

13 grant the Court forgiveness.

14 THE COURT: I was going to explain what

15 makes this case a sport.

16 ITT owned all of Avis. It was a wholly-

17 owned subsidiary. They were ordered to divest.

18 And they did divest themselves of certain chunks

19 of stock, some 30-odd percent, at prices up to $42

20 a share during the period when they had control of

21 Avis and prior to the expiration of three years

22 from the date of the decree, the period during which

23 they were to divest.

24 But at the time when the three years

25 expired that stock was selling for slightly a

1 fraction above 6. And that's the time when the
2 Trustee acquired the 63 percent of the shares of
3 Avis.
4 The Board of Directors on Avis at that
5 time were directors selected by ITT. Those
6 directors have since been replaced and today those
7 are all independent directors.
8 The difficulties of keeping Avis viable
9 as a competitive entity, which was part of the
10 reason underlying the divestiture which was
11 required by the decree to maintain competitiveness,
12 requires that Avis be nurtured back into a
13 strengthened viable, if you will, automobile rental
14 company.
15 Now the record on that has been good up
16 to now. That stock is now selling for 15 and --
17 well, I didn't check the market today, but it's in
18 excess of 15. And that is a very substantial
19 increase in value of those shares for any share-
20 holder who has continued to hold his Avis stock.
21 Now there may be a lot of reasons for it.
22 But there has been emphasis by the Court through
23 its interest in the reports received from the
24 Trustee, and in the way this business has been
25 operated and the way it has been strengthened, and

1 the Court has been encouraged by the results thus
2 far attained in making this into a viable and
3 competitive rental auto company.
4 Not only that, but the existing share-
5 holders have a stake here, which is what makes
6 this unique.
7 It is true these outstanding shares
8 overhang the market. But the threat that they
9 pose to the market has been diminished and
10 contained to a degree by the perceptiveness and the
11 wisdom and the concern of the present Board of
12 Directors and the Trustee that that chunk of stock
13 representing control should not suddenly disrupt
14 the whole question of the marketability and the
15 value of that stock.
16 So that Trustee Order Number 3, when
17 adopted, had a purpose. And it's as Mr. Jaffe has
18 stated: to maintain a viable competitive organiza-
19 tion.
20 As it happens, doing that has helped
21 the stockholders. It may eventually help ITT, who
22 is the ultimate beneficiary of what is realized
23 from these shares.
24 Now that was something that I thought I
25 would advisably interject at this point. Because

1 it is my view, and I find, that it is not material
2 that the exact date when this offering will be
3 made was not disclosed in the proxy statement.
4 The whole purpose and program is well
5 known to every shareholder, it's uppermost in the
6 minds of all of the Directors, and it was certainly
7 basic to the original order which was approved by
8 this Court.
9 And, by the way, never challenged by the
10 Department of Justice, nor by anyone else until
11 this date.
12 I do believe it might be necessary to
13 update the proxy to indicate the terms of the Fuqua
14 offering under Rule 14(a)-(9). As I understand it,
15 that has been done as promptly and as expeditiously
16 as time would permit.
17 And the defendants very properly point
18 out that it is Fuqua's delay that caused the
19 problem. They were well aware, or should have been,
20 for a long period of time before last week, that
21 they were going to make this offer.
22 So that it is difficult for me to see
23 how laches does not affect the ruling that the
24 Court ought to make with respect to that update.
25 Because whether Mr. Gould knew in December, had a

1 prospective buyer that was then Fuqua or not,
2 certainly knew the very day that this statement was
3 issued on the 4th of May what the situation was.
4 And actually in his Trustee's report
5 dated April 20th and filed with this Court, which
6 is a matter of public record, Mr. Smith indicated
7 what the proposed shareholder amendments were
8 that were going to be presented to the shareholders
9 for action.
10 Also not disclosed today in that
11 connection is the fact that these proposed amendments
12 came about as a result of a study in some depth by
13 an ad hoc committee of the Board of Directors. I
14 forget who they are. Mr. Haack and --
15 MR. TOPKIS: Scanlon and O'Brien.
16 THE COURT: Scanlon and O'Brien. All
17 right.
18 You know who Mr. Scanlon is. He's a
19 former high official for many years with A.T.T.
20 And you know who Mr. Haack is. He's
21 been around. You fellows have seen him around
22 on the floor of the Exchange and on the highways
23 in the vicinity of Wall Street, and he's well known
24 in the financial community, and I suppose
25 exceedingly knowledgeable about the ins and outs

1 and the effect of amendments of the kind proposed.
2 I have no reason for believing that those men had
3 any ulterior motive or desire to perpetuate anybody
4 in office. Their interest is that solely as
5 independent directors.
6 The plaintiffs argue that the provision
7 in the proxy statement that these amendments
8 could discourage tender offers is misleading.
9 They contend that the proper verb to use is
10 "will" discourage.
11 Well, I don't agree with that. I think
12 that this is a sufficient explanation so that no
13 shareholder called upon to vote would be mis-
14 informed or not fully informed so as to render
15 an informed decision on that question.
16 Then the point is made of a conflict of
17 interest on the part of Mr. Smith and Mr. O'Brien.
18 Now, it's true that conflicts of interest of
19 directors and other insiders are generally very
20 relevant to shareholder decision, and the failure
21 to set out the interests of the Trustee, therefore,
22 is called into question as to whether that is a
23 material omission.
24 Of course, his interest in remaining a
25 trustee is obvious - he's going to have some benefit

1 or he's going to have an opportunity to earn some
2 fees as a trustee that will be paid - not by Avis,
3 but by the beneficiaries of the trust: ITT.
4 And, likewise, any expense incurred by
5 him, unlike the usual case which would be borne
6 by the corporation, in this case is being borne
7 again by ITT.
8 So I say that interest is sufficiently
9 disclosed in my view so as not to make that
10 omission material. However, it's, I think, worthy
11 of notice that the interest has now been disclosed
12 in a supplemental statement so that the share-
13 holders will have the benefit of that.
14 I think it is sufficiently apparent that
15 this is a pro-management proposal, these changes
16 and, frankly stated, to give a measure of stability
17 to the present managing organization of Avis; one
18 which apparently has done very well in getting
19 Avis straightened out and on a path toward noticeable
20 profitability.
21 And of course, as I say, the only thing
22 not disclosed was the amount of fees which Mr.
23 Smith and his law firm received. But the amount
24 of those fees are public, they have been approved
25 by Justice, ITT and by me. So there has been no

1 secret about them.

2 And I would say that the SEC must have

3 some knowledge of that arrangement, but apparently

4 did not think it necessary for the Trustee to

5 disclose his fees. It's relevant, not necessarily

6 decisive, but gives some support to my own view

7 that it was not material.

8 And O'Brien's conflict I think is not

9 so obvious as Smith's, but again not of such

10 material significance either.

11 In any case, all of these problems may

12 have been cured by the supplement sent to the

13 shareholders on May 19th. And I suppose the only

14 question there was whether that notice was timely.

15 And so far as I am able to judge, I

16 would say that that notice is timely under the

17 circumstances here. It could not have been done

18 sooner. If there is a delay or if it's a little

19 late it turns out to be it was not, in my view, the

20 fault of the Trustee.

21 All right. Now we get to the next

22 question, which is should Fuqua be permitted to

23 intervene.

24 Intervention is governed by Rule 24

25 (a)(2) as of right, and Rule 24(b) permissive.

1 On intervention as of right, the
2 application is not timely. This case has been
3 going along for several years now. The order
4 which they now challenge has been issued several
5 years ago.
6 Justice opposes intervention, the Avis
7 shareholders or the Avis management opposes
8 intervention, and I am of the opinion that inter-
9 vention does not lie and should be denied.
10 I don't think everybody who comes in and
11 wants to buy some of the stock held by the Trustee
12 is entitled to intervene in the original proceedings
13 in order to change what has been done in the past.
14 Now, Fuqua relies on the antitrust
15 intervention of competitors and a gas purchaser in
16 Cascade National Gas.
17 In that case the intervenor depended upon
18 the product of El Paso in order to keep in business.
19 I don't understand that Fuqua is short of rental
20 cars for its personnel. They don't want to buy the
21 product of Avis; they want Avis, itself. And as a
22 mere potential purchaser of the stock Fuqua is a
23 stranger to these proceedings and a stranger to
24 Avis, and has been.
25 So I think that that ruling of mine is

supported by Old Colony Trust Company against Penrose Industries, which was called to my attention by Mr. Gould. That's at 387 F. 2nd 939.

And I have some other notes here that ought to go into the record. The Supreme Court has stated that intervention as of right requires a significant protectible interest. That's Donaldson vs. United States, 400 U.S. 517.

That interest must be direct, not contingent. And that's In Re Penn Central Commercial Paper Litigation, 62 F.R.D. 341 at 346, and affirmed at 515 F.2nd 505 by the Second Circuit, 1975.

Then another case is Kheel against the American Steamship Owners, 45 F.R.D. 281.

Moreover, intervention as of right presupposes that the applicant has a right to maintain a claim for the relief sought. That's 440 F. 2nd 124, Cert. denied, 403 U.S. 905.

Fuqua has no right to demand that the Trustee sell the shares to him. It may be a eager suitor, but it has no right at all.

And I might suggest that the case of U.S. against ITT, 349 F. Supp. 22 at 26 and 27 is relevant, affirmed under the name of Nader vs.

1 U.S., et al, 410 U.S. 919. It's a case where Mr.
2 Nader sought to intervene in order to challenge
3 provisions of the decree in the settlement of this
4 particular antitrust suit.
5 Now, permissive intervention depends upon
6 whether there are common questions of law or fact
7 to be litigated and the prejudice to the actual
8 litigants. Well, no one is yet litigating any
9 matter respecting of the Trustee's breach of
10 fiduciary duty. There is some allegation in
11 Miller, Count Two, but the rule to show cause does
12 not embrace what is alleged in Count Two.
13 All right. So what is before me today
14 is to decide whether a preliminary injunction should
15 be granted today against the holding of that
16 shareholders meeting on the 25th.
17 The criteria to be considered are those
18 which are set forth in Sonesta International
19 Hotels, a recent Second Circuit case cited by
20 all parties. And that requires a showing either,
21 one, of probable success on the merits and possible
22 irreparable injury; or, two, sufficiently serious
23 questions going to the merits to make them a
24 fair ground for litigation and a balance of
25 hardships tipping decidedly toward the party

1 requesting preliminary relief.

2 Well, as to Prather and Miller, the
3 likelihood of success on the merits is unclear and
4 dubious. Because their claim is related to the
5 materiality of the omissions with respect to the
6 interest of the Trustee and the materiality of the
7 registration of the secondary offer.

8 So far as the existence of the Fuqua offer
9 is concerned, that does seem material. But all of
10 this may have been corrected by the May 19th
11 letter. The letter at least casts doubt on the
12 probability of success on the merits.

13 So I think the likelihood of success
14 on the merits is doubtful.

15 Then comes the question of irreparable
16 injury. Well, there is great reluctance on the
17 part of courts to enjoin the holding of an annual
18 meeting and the courts rarely find that the stock-
19 holders will suffer irreparable injury.

20 Judge Owen recently said, and I quote:
21 "If the plaintiff hereafter demonstrates that the
22 proxies were unlawfully obtained and utilized the
23 results of the annual meeting may then be set
24 aside, the proxies resolicited and a new vote
25 held". That's in Clairdale Enterprises, 423

1 F. Supp. 261. And a case in the court is Jewelcor,
2 Inc. versus Pearlman, 397 F. Supp. at 252 and
3 253.
4 And Judge Weinfeld, whom we all know,
5 said the same thing in McConnell vs. Lucht, 320
6 F. Supp. at 1166 and 1167, pointing out that
7 enjoining the meeting was an undue interference
8 with corporate affairs, shareholder democracy,
9 and could adversely affect the company's credit
10 rating and market value of shares.
11 Those were factors adverted to here by
12 counsel for Avis.
13 And in McConnell Weinfeld, J. also
14 criticizes eleventh hour suits.
15 In addition there's a notion that
16 enjoining the meeting may put present management at
17 an unfair disadvantage in the later solicitation of
18 proxies because the ruling of the court enjoining
19 this meeting carries somehow some sort of stigma.
20 The only other irreparable injury the
21 shareholders could allege is they are deprived of
22 the benefits of the Fuqua offer.
23 Well, in reality they are denied the
24 benefit of having the Trustee and the Court
25 consider the offer at this point. But the

pocketbook injury to the shareholders is remote since it is unlikely that this Court would order the Trustee to accept the offer.

Because when you come down to it, the test at that point is whether this is a reasonable business decision. And there are many factors involved in whether that offer is reasonable, as pointed out in the affidavits of Professor Shapiro and Mr. Troub, both very experienced and knowledgeable and with a high reputation in the field of corporate finance, and on whose opinions I place considerable weight.

Furthermore, if the results of the meeting are later set aside, Fuqua is free to bid again under the conditions which it prefers.

And, finally, any loss which is sustained is compensable by money damages. What the shareholders could conceivably recover is a few dollars more. Well, that's only money, and they are a pretty substantial looking bunch of defendants here, as you've all noticed.

And even if Fuqua were to be granted the right to intervene permissibly or as of right, its chances of success on the merits, that is, to amend Trustee Order Number 3, are extremely remote.

1 They lack legal standing in this case.
2 As I say, it's not very likely that this Court
3 would force the Trustee to accept the offer of
4 Fuqua, for the reasons which are stated in the
5 affidavits submitted by the defendant.
6 Furthermore, Fuqua will not suffer
7 irreparable injury. As I said earlier, you can
8 still try to take over Avis - you just have to
9 try harder.
10 And if the meeting is unlawful, the
11 changes in the by-laws will be set aside and Fuqua
12 can bid again.
13 The constitutes the ruling of the Court.
14 As I say, we're involved under some
15 pressure of time and I wanted to be able to make
16 the ruling today so that you can get down to the
17 17th floor there at Foley Square tomorrow sometime
18 and be heard perhaps before this annual meeting is
19 held.
20 MR. GOULD: In that connection, your
21 Honor, I will move the Court for an order pursuant
22 to Rule 62(c) - this is in the U.S. against ITT
23 case - that the defendant intervenor Avis be
24 enjoined from holding the meeting on the 25th
25 pending the disposition of the application of

1 Fuqua Industries to the Circuit Court of Appeals
2 from your Honor's order. And we undertake, of
3 course, to make that application immediately. It
4 is in process of being made.
5 And I also ask that pending such further
6 order that they be enjoined from tabulating and
7 announcing the vote of the shares of Avis on the
8 matters contained in Proposals 1, 2 and 3 in the
9 proxy statement.
10 THE COURT: That's denied, with leave to
11 make the same claim before the Court of Appeals.
12 MR. GOULD: Thank you, sir.
13 And in the Prather action I make the
14 application in somewhat different language, your
15 Honor, if you'll just bear with me for one
16 moment.
17 That Avis be enjoined from holding the
18 annual meeting of the stockholders pending dispo-
19 sition of the application to the Court of Appeals
20 for the Second Circuit and that they be enjoined
21 from tabulating and announcing the vote of the
22 shares of Avis' common stock at that meeting on
23 the matters contained in Proposals 1, 2 and 3 of
24 the proxy statement dated May 4th.
25 I call on counsel for Avis to consent to

1 the making of both orders.

2 MR. TOPKIS: What? Could I hear that

3 again? I m not sure --

4 MR. GOULD: I don't want you to suffer

5 from the shock.

6 I'm making a motion to consent to stay

7 things pending the application to the Court of

8 Appeals.

9 Your answer is you don't? I gather that

10 from that whimsical shake of the head.

11 I gather that counsel will not consent.

12 I assume your Honor will rule on that as you

13 ruled on the previous motion.

14 THE COURT: The same ruling.

15 MR. GOULD: Thank you very much.

16 MR. KEISMAN: Your Honor, in Miller vs.

17 Avie we would like again to move for a stay as was

18 moved for in Prather.

19 Would your Honor require me to repeat

20 the language, or may I incorporate by reference the

21 application?

22 THE COURT: You may incorporate by ref-

23 erence and the ruling is the same: denied, with

24 leave to renew before the Court of Appeals.

25 Short Recess.

* * *

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from my original stenographic notes of the proceedings on May 23, 1977, in the U.S. District Court, for the District of Connecticut, at Hartford, before the Honorable M. Joseph Blumenfeld, Senior United States District Judge.

Paul Collard
Official Court Reporter

DATED: MAY 24, 1977.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PRATHER, Plaintiff, -against- AVIS, INC., RICHARD JOYCE SMITH, DRUMMOND C. BELL, RODNEY C. GOTT, ROBERT W. HAACK, WILLIAM W. LYON, ROBERT C. O'BRIEN, ELI SHAPIRO, OLCOTT D. SMITH, WILLIAM E. FRUHAN, JR., ALVA T. BONDA and JOHN J. SCANLON, Defendants.	Docket No. H77-222 NOTICE OF APPEAL

S I R S:

PLEASE TAKE NOTICE, that plaintiff herein hereby appeals from each and every part of the Order of the Honorable M. Joseph Blumenfeld of the United States District Court for the District of Connecticut, dated May 23, 1977, denying, inter alia, plaintiff's motion to enjoin defendant Avis, Inc. from holding the forthcoming annual meeting of its stockholders scheduled to take place on May 25, 1977.

Dated: New York, New York
May 23, 1977

SHEA GOULD CLIMENKO & CASEY

By Howard D. Fischer
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Hartford, for designation

Notice of Appeal
178a

TO: Whitman & Ransom
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The following documents are not part of the Joint Appendix. They are part of the papers on file in the District Court prior to the instant proceedings and are being offered by the attorneys for Miller, Prather and Fuqua Industries, Inc.

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U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, v. INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants.	Civil Action No. 13,320

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 1, 1969, and the defendants having filed their answers thereto, and plaintiff and defendants, by their attorneys, having consented to the entry of this Final Judgment;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a

claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II.

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;

(B) "Subsidiary" shall mean a company which a person controls or has power to control, or in which fifty percent (50%) or more of the voting securities is owned or controlled by that person, directly or indirectly;

(C) "ITT" shall mean defendant International Telephone and Telegraph Corporation and any of its subsidiaries;

(D) "Hartford" shall mean Hartford Fire Insurance Company and any of its subsidiaries;

(E) "Avis" shall mean ITT Avis, Inc. and any of its subsidiaries;

(F) "Levitt" shall mean ITT Levitt and Sons, Incorporated and any of its subsidiaries;

(G) "Hamilton Life" shall mean ITT Hamilton Life Insurance Company and ITT Life Insurance Company of New York.

III.

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by

means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant.

IV.

(A) ITT is ordered and directed to divest within three (3) years from the date of entry of this Final Judgment, (1) all of its interest, direct and indirect, in Levitt, Avis, and Hamilton Life, or (2) in the alternative, all of its interest, direct and indirect, in Hartford.

(B) The divestiture of Levitt, Avis and/or Hartford directed in subsection (A) hereof shall not be made as a part of the divestiture of any other of said corporations or the Fire Protection Division of Grinnell Corporation, or to any person acquiring ITT's interest in the stock or assets of any other of said corporations, or in the stock or assets of Canteen Corporation, or in the Fire Protection Division of Grinnell Corporation, except upon the consent of the plaintiff or, failing such consent, upon approval of this Court. This prohibition shall not, however, prevent joint, simultaneous, or successive public offerings of the separate stocks of any of said corporations, or the distribution of said separate stocks as dividends or in exchange offers to shareholders.

(C) Subject to the limitations set forth in this Section IV, the divestiture directed above may be carried out by any method; provided, however, that if ITT receives in connection with any such divestiture any securities from a person to whom divestiture is made, such securities (other than securities issued by ITT) (1) shall not be voted, if of a voting class, and (2) shall be disposed of no later than two hundred twenty (220) days after receiving such securities, unless plaintiff consents to a longer period, and provided further that if the divestiture

is carried out by way of disposition of assets, such divestiture shall be made in the form of one or more going and viable businesses, each such business to be capable of engaging in substantially the same operations as those previously conducted by such business.

(D) The complete details of any contemplated plan of divestiture intended to implement the provisions of subsection (A) of this Section IV (including the identification of any person, or persons, or class of persons to whom the divested property is to be transferred and all outstanding contracts involving the properties to be divested to which ITT or any of its remaining subsidiaries is a party and not to be fully executed within two (2) years from the date of submission), shall be submitted to the plaintiff by ITT. Following the receipt of any such plan, plaintiff shall have thirty (30) days in which to object thereto by written notice to ITT. If plaintiff does not so object to the proposed plan, the plan may be consummated, but if objection is so made, the proposed divestiture shall not be consummated until ITT obtains judicial approval of the plan or until the plaintiff withdraws its objection; provided, however, (1) that in the case of a plan which provides for a pro rata distribution to security holders of ITT, or an exchange with security holders of ITT or any of its subsidiaries, or a public offering not involving a prior understanding or commitment to sell a portion of the securities to any predetermined purchaser (other than an underwriter or selling dealer for the purpose of resale to the general public), prior approval of the plaintiff need not be obtained and the plan may be consummated upon the termination of the thirty (30) day period, so long as the plan prohibits any person known by ITT to own or control beneficially more than one percent (1%) of the voting securities

(including securities convertible into voting securities) of ITT from receiving any of the equity interest being divested until he has disposed of his voting securities (including securities convertible into voting securities) of ITT in excess of one percent (1%) thereof, and (2) that in the case of a plan as to which the plaintiff objects, the time period set forth in subsection (A) of this Section IV within which divestiture must be accomplished shall, unless the Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any proceeding under this Final Judgment relating to the approval of a proposed plan of divestiture.

(E) If the divestiture requirements of subsection (A) of this Section IV have not been met within three (3) years from the date of entry of this Final Judgment, ITT shall, unless the Court shall on application by ITT otherwise direct, place in the control of a trustee, promptly after his appointment by this Court, upon application of the plaintiff, at the cost and expense of ITT, all of ITT's then undivested interest in Hartford, or alternatively all of ITT's then undivested interest in Levitt, Avis and Hamilton Life, vesting in the trustee full authority to manage and to dispose of such interests subject to Court supervision after hearing the parties hereto on any issue presented;

(F) Until the divestiture required by this Final Judgment is accomplished ITT shall take no action which knowingly impairs the viability of any of the businesses to be divested or ITT's ability to accomplish such divestiture, and, specifically, shall not cause or permit any of

the following as to any company remaining to be divested, except upon consent of the plaintiff:

(1) The payment of any dividends by Hartford, Levitt, Avis or Hamilton Life except out of current earnings, but this restriction shall not prohibit the payment of dividends which are not in excess of the per share rate of the last dividend declaration prior to August 1, 1971;

(2) Any disposition of any of the assets of Hartford, Levitt, Avis or Hamilton Life, other than transactions in the ordinary course of business;

(3) The encumbrance of any of the assets of Hartford, Levitt, Avis or Hamilton Life to secure the indebtedness of any other of them or of ITT or of any other subsidiary of ITT.

V.

(A) ITT is enjoined and restrained, without first obtaining the consent of the plaintiff or approval of this Court upon ITT's establishing by a preponderance of the evidence that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country

(1) From acquiring one percent (1%) or more of the voting securities in any domestic company the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000), or from

acquiring from any one domestic person or group of persons under common control tangible or intangible assets or good will recorded on the books thereof (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000);

(2) From acquiring one percent (1%) or more of the voting securities in any domestic company which in the calendar year prior to said acquisition had total sales in an amount in excess of Twenty-five Million Dollars ($25,000,000) and had in said year in any section of the country in excess of fifteen percent (15%) of total sales in any line of commerce in which total sales in said section of the country exceeded One Hundred Million Dollars ($100,000,000) and in which any four (4) companies had combined sales in excess of fifty percent (50%) of total sales in said section of the country, or from acquiring any substantial proportion of the assets of any such company used in such line of commerce in such section of the country;

(3) From acquiring one percent (1%) or more of the voting securities in any domestic company engaged in the manufacture, fabrication, installation or sale of automatic sprinkler devices or systems, or any of the capital assets of any such company for use in such activities;

(4) From acquiring one percent (1%) or more of the voting securities in any domestic insurance

company with insurance assets in excess of Ten Million Dollars ($10,000,000), or any of the capital assets of any such company for use in the business of insurance; and

(5) From acquiring, except as contemplated by Section IV(B) of this Final Judgment or upon consent of the plaintiff, any substantial interest in any property to be divested pursuant to Section IV of this Final Judgment, or any interest in a person who acquires any property to be divested pursuant to Section IV of this Final Judgment so long as such person retains such property.

(B) The prohibitions contained in parts (1)-(4) of subsection (A) of this Section V shall not apply (1) to transactions by ITT in the regular course of its business of investing in securities (whether through Hartford or otherwise) where the acquisition of securities of any corporation covered by the provisions of said parts (1)-(4) is made solely for purposes of investment and the percentage acquired does not exceed five percent (5%), or (2) to acquisitions by ITT of securities or assets in any subsidiary of ITT.

(C) The prohibitions contained in subsection (A) of this Section V shall no longer be in effect if and when ITT divests itself of all of its interest in Hartford.

VI.

Simultaneously with the consummation of the divestiture of a company pursuant to Section IV of this Final Judgment, ITT shall take such steps as may be necessary to remove from the position as director or officer of such

company any person holding any position with ITT, unless plaintiff otherwise consents.

VII.

Defendants are enjoined and restrained, so long as ITT owns any interest in Hartford, from discriminating in favor of each other in the purchase or sale of any of ITT's insurance requirements.

VIII.

Defendants are enjoined and restrained, so long as ITT owns any interest in the Fire Protection Division of Grinnell Corporation, from using the position and influence of Hartford to assist the Fire Protection Division of Grinnell Corporation in securing sales of its products.

IX.

Defendants are enjoined and restrained, for a period of ten (10) years from the entry of this Final Judgment in connection with any purchases or sales in the interstate or foreign commerce of the United States, from:

(A) Purchasing, or entering into or adhering to any contract, agreement or understanding to purchase, products, goods or services on the condition or understanding that purchases by defendants or either of them from any actual or potential supplier will be based on or conditioned upon, in whole or in part, such actual or potential supplier's purchases from such defendants;

(B) Selling, or entering into or adhering to any contract, agreement or understanding to sell, products,

goods or services to any actual or potential customer on the condition or understanding that purchases of products, goods or services by defendants or either of them from such customer will be based on or conditioned upon, in whole or in part, such actual or potential customer's purchases from such defendants;

(C) Communicating to either defendant's actual or potential suppliers or contractors that:

(1) In purchasing products, goods or services, such defendant will give preference to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such supplier's or contractor's purchases from such defendant;

(2) In compiling bidder lists or in awarding contracts for projects involving capital expenditures by either defendant, preference will be given to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such contractor's or supplier's purchases from either defendant;

(3) Either defendant is entitled to receive contracts or orders for products, goods or services from any supplier or contractor based on or conditioned upon, in whole or in part, either defendant's purchases from such supplier or contractor, or based on or conditioned upon, in whole or in part, any contract award made by either defendant to any such supplier or contractor;

(D) Comparing or exchanging statistical data with any actual or potential supplier or contractor to ascertain, develop, facilitate or further any relationship between purchases by either defendant from such supplier or contractor and sales by either defendant to such supplier or contractor;

(E) Engaging in the practice of discussing with any actual or potential supplier or contractor the relationship between purchases or contract awards by either defendant involving such supplier or contractor, and sales by either defendant to such supplier or contractor;

(F) Preparing or maintaining lists or statistical compilations which compare the volume of, or dollar amount of, purchases by either defendant from suppliers or contractors, or the fact of or dollar value of contracts awarded by either defendant to such contractors, with purchases by such suppliers from either defendant or contracts awarded to either defendant by such contractors;

(G) Issuing, to personnel having responsibilities for purchasing or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases from either defendant or which identify companies and the dollar value of contracts such companies have awarded to either defendant or which specify or recommend that purchases be made from any such customers or that contracts be awarded to such companies;

(H) Referring compilations of bids received for contracts for projects involving capital expenditures by either defendant to any department or unit of either defendant having sales responsibilities for decision or recommendation

by such department or unit as to the identity of the firm or firms to which contracts for such projects should be awarded;

(I) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors purchase from certain customers of one or both defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors;

(J) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors will attempt to persuade other companies to buy from one or both defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors.

X.

Each defendant is ordered and directed to:

(A) Refrain from continuing or establishing any office or position the activities, programs or objectives of which are to promote trade relations involving reciprocal purchasing policies, arrangements, or practices in the interstate or foreign commerce of the United States;

(B) Withdraw from all personnel with sales responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (H) of Section IX above, and withdraw from all personnel with purchasing or contracting responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (G) of Section IX above;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to, or participating in the activities of, or contributing anything of value to, any association whose activities, programs or objectives are in whole or in part to promote trade relations involving reciprocal purchasing policies, arrangements or practices in the interstate or foreign commerce of the United States;

(D) Issue within sixty (60) days to each of its officers and employees having sales, purchasing or contracting responsibilities in the interstate or foreign commerce of the United States a policy directive stating that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based on or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon, in whole or in part, or influenced by either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, on the condition or understanding that such solicitations or such awards by a defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant;

(4) Violation of the policy directive may subject any offending officer or employee to dismissal from his employment and to liability for violation of this Final Judgment;

(E) Furnish to each domestic supplier from which any ITT operating unit in the United States purchased Twenty Thousand Dollars ($20,000) or more in products, goods or services during 1970, and to each domestic purchaser to which any ITT operating unit in the United States other than Hartford sold Twenty Thousand Dollars ($20,000) or more in products, goods or services during 1970, and to each purchaser of insurance whose account was handled during 1970 by Hartford's Special Accounts Insurance Department, a statement accurately and completely describing the provisions contained in Sections IX and X of this Final Judgment, or a copy thereof, and advise each such supplier and customer, by written notice satisfactory to the Antitrust Division of the United States Department of Justice, that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase, products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based on or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell, products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon, in whole or in part, or influenced by, either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, upon the condition or understanding that such solicitations or such awards by either defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant;

(4) The provisions of Sections IX and X of this Final Judgment apply with full force and effect to all insurance activities of defendants, as well as to all other financial and commercial transactions of defendants.

XI.

Nothing in Sections IX or X of this Final Judgment shall prohibit either defendant:

(A) From entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(B) From contracting for construction work or for the manufacture or installation of equipment and facilities for its own use and not for resale on the condition that its products, goods or services are to be used in the performance of such contracts; or

(C) From complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

XII.

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, each defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such

defendant's principal office, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section XII of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judg ent

to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV.

This Final Judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein.

M. Joseph Blumenfeld
United States District Judge

Dated: Sept. 24, 1971.

December 1, 1975

MEMORANDUM

TO: Richard Joyce Smith, Trustee

FROM: Raymond S. Troubh
Ora C. Roehl

RE: AVIS, INC. - Plan of Liquidation of Trustee's Avis Holdings

In his "TRUSTEE'S SECOND REPORT PURSUANT TO TRUSTEE ORDER NO. 1" dated March 3, 1975, the Trustee presented a broad program to the Court (supported by our memoranda of February 3 and February 18, 1975) for the divestiture of his Avis shares. The program, which was designed to take into account the best interests of the Avis shareholders, Avis's financial condition and its continued viability, was approved by the Court.

I. BACKGROUND

The principal feature of the plan was the infusion of new capital into the company through the purchase of 1,487,000 shares of Avis common stock by ITT at a cost of $17,295,000. The agreement reached by the Trustee with ITT was in our opinion the only possible way that needed equity capital could be raised by Avis early in 1975 on terms equitable to Avis. It was felt that the new capital would solve Avis's immediate financial problems and give Avis management time to demonstrate its ability to operate Avis as an independent company.

As part of the agreement by ITT[199a] to purchase the additional stock of Avis the Trustee agreed that he would not, during the next 12 months, unless there were a dramatic turn for the worse in the fortunes of Avis, recommend a private sale of the Avis shares held by him at less than $11.63 per share (the cost of the additional shares to ITT). This period is considered to expire on January 15, 1976.

We also noted in our February 1975 memoranda certain factors which impelled us to recommend against any hasty sale or other divestiture of the Trustee's shares until a "shakedown period" had elapsed giving Avis management an opportunity to manage the company without the intrusion of peripheral clouds such as merger examinations, court hearings and other non-productive and non-related impediments. Then as improvement in Avis's operations would hopefully become evident to the financial community we felt that a much better climate would emerge for the disposition of the Avis stock to the substantial benefit of Avis, its public shareholders and the general public who use and require rent-a-car services.

We listed the following factors which we believed would contribute to a significant improvement in Avis operations during the next twelve months:

"1. A substantial decline in interest rates.

"2. An improvement in Avis's Canadian operations.

"3. The consolidation and streamlining of Avis truck operations.

"4. The realization of economies under the Wizard System.

"5. The continuation of management programs aimed at cash conservation and overall operating efficiencies.

"6. The gradual improvement in general economic conditions."

Of the six items enumerated above, we are pleased to report that five have occurred and the remaining one (improvement in Canadian operations), while disappointingly slow, is pointing in the right direction.

II. PRESENT SITUATION

As financial advisers to the Trustee, we have been in constant touch with senior Avis management both on the operational and financial side of the business. We have held numerous meetings with the management and with the Trustee and with other directors of Avis in order to fully inform ourselves as to the present Avis condition and its future prospects. We wish to report to the Trustee that the Avis management has been totally cooperative with us and extremely helpful in providing all the information we have requested.

The Avis top management has, in our opinion, been strengthened substantially, not only by good additions to the staff but also by promotions and reassignments within the company. Certain areas of concern such as controls, management information systems, accounts receivable and bad debt reserves (particularly in the foreign area), and foreign exchange problems, have been attacked

with agility and determination, and while not yet totally solved, at least the problems have been identified and exposed. One ingredient of good management is to eliminate "surprises". Investors demand certainty and credibility; "surprises" destroy both of these desirable characteristics. Hopefully, and we believe realistically, Avis management is on top of its problems.

From the financial point of view, Avis has done extremely well so far in 1975 and it appears the momentum not only is continuing but may well be stepped up. We believe the third quarter figures, recently published, were well received and the full year's results when they appear will surpass the expectations of what even the most optimistic of Wall Street observers looked for at the beginning of the year.

Comparative figures for the nine months ended September 30, 1975, show a strength and a rebound from last year's results that is surprising in view of the rather slow emergence of the economy (domestic and foreign) from the recent recession. (See Exhibit 1 attached hereto.) The figures demonstrate that Avis management is approaching the control, discipline and flexibility to become and remain an independent, viable public company.

The after tax (and after preferred dividend) earnings of $9,338,000 or $1.31 per share (on the basis of 6,985,886 weighted average shares outstanding) were achieved despite a loss of $2,363,000 or $.34 per share in foreign exchange translations and despite the failure to control Canadian losses which cost another

$1,512,000 pretax. As we indicated above, the Canadian situation is coming under control but much more slowly than Avis management had anticipated.

We are confident that barring economic and monetary events beyond Avis management (or any other management) control, the "Avis numbers" reflect momentum and progress which will continue.

Overall, the plans for operating and balance sheet improvement which Avis management outlined to us earlier in the year have been implemented and the hoped for results are coming along on schedule. In addition, Avis has a distinguished Board of Directors composed of men experienced in conducting the affairs of large public companies and versed in the financial and other problems that confront such companies. The Finance Committee of the Board is especially strong and competent.

We believe we have obtained sufficient insight as to the business of Avis so as to be able to recommend to the Trustee that the time has come to take action on the next step in his divestiture program.

III. PROPOSAL AND DISCUSSION

We have previously reviewed with the Trustee various methods of divestiture of his shares. We believe that, for reasons stated below, the next step in the divestiture plan which would be most beneficial to Avis and to its shareholders would be the sale by the Trustee, in early 1976, of around 1,000,000 shares of stock.

This would reduce the Trustee's holdings to 3,587,000 shares or 47.9% of the outstanding shares.

Avis has outstanding 7,487,000 shares of common stock, of which the Trustee now holds in trust a total of 4,587,000 shares, constituting 61% of those outstanding. According to the latest records of the company, there are no holders of record holding more than 5% of the stock. There are about 2,100 holders of record holding the remaining 2,900,000 shares of stock not held by the Trustee. No significant institutional holdings appear on the company records. The shares are listed on the New York Stock Exchange and have recently been quoted around 7 per share. The range from January 1, 1975 to date has been 9 7/8 to 5 1/8.

On November 12, 1975, a non-registered secondary offering of 268,100 Avis shares was made on the New York Stock Exchange at the price of the last trade on that day or 6 7/8. Dillon, Read & Co., who managed the sale, has reported that indications of interest exceeded 500,000 shares and that after the offering the bid price for the stock increased by 3/8 to close at 7 1/4.

We believe that Avis is a quality company, that its earnings will improve and become less erratic, and that its shares should be reintroduced to the public in a secondary offering carrying the imprimateur of a distinguished major underwriting house. To this end, we have canvassed a number of leading firms and each has indicated an interest in managing such an issue.

The investment firms with whom we have had discussions and who have submitted general comments are:

Dillon, Read & Co., Inc.
Goldman, Sachs & Co.
Kidder, Peabody & Co., Inc.
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Paine, Webber, Jackson & Curtis Incorporated
White, Weld & Co. Incorporated

Each of the firms is considered a "major" in underwriting parlance and each has a successful record of managing equity underwritings. Each such firm indicated that, assuming the stock market and business conditions continued in their present state, 1,000,000 shares or somewhat more if that were desirable could be readily distributed early in 1976 shortly after the issuance of Avis's annual report for 1975.

Each also indicated a desire to work with the company on its financial plans for the future.

As we have mentioned before, Avis needs a master financial plan and the company is giving this most important question a great deal of top management attention. The Trustee's final divestiture plans will need to be to a great extent related to Avis's own plans for its independent financial future.

We visualize this first distribution of Trustee's shares as one initial step in a program to develop and then make known to the investing public Avis's 1976-1977 financial and operating plans. At this time we do not recommend that more than 1,000,000 to 1,500,000 shares be distributed by the Trustee as we are still

concerned with the specter of outsiders obtaining control of the company on a basis that would not be fair to Avis and its shareholders and which might not permit time for the company's management to have Avis emerge from the final divestiture of the Trustee's stock as a strong, independent force in the rental car business, which in our opinion is the objective that should be sought by all parties to the divestiture proceedings.

While the company will in the future need to raise additional equity capital, yet other phases of the company's financial plans presently have a higher priority. The company's current equity position is relatively comfortable but not at all luxurious. At the present time the following financial planning questions will be receiving management attention. Of course, fundamental to everything is the need for the company to continue its earnings improvement.

1. As Avis is in a capital intensive industry, it is most important that efforts be made to lessen its dependence on bank and other short term financing and the restrictive provisions inherent in such loan agreements. The possibility of selling long term debt (over 10 years) either on a private placement basis in the U.S.A. or abroad is being considered as well as the sale of intermediate debentures (5 years to 10 years maturity).

2. Avis at one time was active in the commercial paper market but this market is closed to it today. If the

Avis business continues to improve and if it is able to increase its equity base and obtain longer term debt financing, it may again have a rating of A2/P2 and regain access to this least expensive means of raising short term capital, a source now open to its strongest competitor, Hertz.

3. Another financing area under review is the equity-linked means of raising capital -- convertible bonds, convertible preferreds, other types of preferred stock financing and warrants.

4. And -- finally the raising of new equity capital through the sale of new common stock. This may best be planned to coincide with the final divestiture of the Trustee's common stock holdings -- sometime in 1977 or even early 1978.

The ability of Avis to raise capital on a competitive basis with the strongest factors in its industry is critical to the company and the contemplated first divestiture by the Trustee must, as we have said before, be programmed so as not to interfere with Avis capital raising goals and abilities.

It would be expected that the underwriter selected to manage the proposed offering would promptly start to outline and prepare a prospectus in cooperation with the company, the Trustee and the associated legal counsel. Our current thinking visualizes

an announcement of the public offering around March 1 followed by extensive meetings between Avis management and prospective underwriters and institutional purchasers with the public offering taking place in early 1976.

Because of the special nature of the sale of the Trustee's stock there are undoubtedly a number of special questions, such as whether or not the issue is a "new issue" and thus not eligible for margin purchases, which must be determined and answered.

Another question that will require an early answer is the question of reinstituting a common stock dividend. Some prospective managing underwriters feel that a dividend rate of 5¢ or 10¢ quarterly should now be established to help the sale of the stock. Our initial reaction is that the question of a dividend might better await consideration in mid-1976. Then if Avis's fortunes continue to improve, a dividend policy could be established and the payment of a dividend at that time would be another indication of Avis's progress.

We have discussed in our previous memoranda the importance to Avis of good financial public relations. The company these past months has concentrated on improving its own internal financial operations and in bettering its relations with its principal lenders. The managing underwriters of the proposed offering will want to arrange for meetings with investors in various key cities in the U.S.A. and perhaps also in certain key cities in Europe. Such meetings will give the company the opportunity not only to

discuss its current operations but to also outline its financial plans for the future. In addition, each of the prospective managing underwriters agrees with our view that Avis management should commence a program of analyst meetings and more complete financial public relations in order to reinterest Wall Street in the company and restore Avis's credibility.

There is naturally some concern about the effect that the "overhang" of the Trustee's remaining stock has and will have on the price of the Avis stock. There is no question that the Avis stock price has been under pressure because of the unknowns about what the Trustee may do with his shares. While the "overhang" will continue to be a factor, yet a better understanding of the company's operations and of the Trustee's future divestiture program should go a long way towards improving the climate.

It is our expectation that the market for Avis shares will improve after the initial offering because of the orderliness of the distribution and the certainty created in the minds of Avis employees and the investing public that it is the Trustee's firm intention that Avis be independent and that the market will not be disrupted by an abrupt or disorderly distribution. This plan will assure the utmost flexibility giving the Trustee an opportunity to take advantage of any unforeseen event. It will also reduce the Trustee's absolute majority control while, at the same time, protecting Avis for a time while it prepares for total independence. It will be up to the Avis management and Board of

Directors at that time to fashion future plans and chart Avis's future course.

It is, of course, most important tha the first offering of the Trustee's shares not only be accomplished but that it be especially successful. This will require that detailed attention be given to the pricing of the issue, the commission structure, and also to the maintenance of a solid after market along with continuing follow-up research coverage and reports to investors. It is believed that support of both retail and institutional buyers will be vital to success of this issue.

One other divestiture question also must be kept in mind and that is the $5 million Avis Series A Preferred Stock which we understand is considered an ITT interest in Avis and which is also held by the Trustee for divestiture. (The dividend rate on the Preferred is 5.5% until July 1, 1977 and then becomes 1% below the prime rate charged by the Irving Trust Company. Beginning January 1, 1978, 2,500 shares of the Preferred are to be redeemed by the company annually.) The ultimate disposition of this security is another factor that requires consideration.

We have not yet finalized our recommendation as to the managing underwriters. We would expect to recommend a firm or firms which, of course, would be compatible with Avis's management views. It is our plan to meet with the Trustee during the week of December 8, 1975 and will then present our comments about

the various potential underwriters so that an early selection can be made and work on the prospectus can go forward.

Our conclusion is that Avis is a viable corporate entity, fully capable of reemerging as an independent force in a large and important industry. The Trustee's sale of his shares in early 1976 in an orderly fashion as outlined above would be the divestiture approach most beneficial to Avis, its shareholders, its employees and other interested parties.

We believe public interest in the Avis shares is present and significant. As we have indicated, our recommendation that the Trustee undertake the initial divestiture of the Avis stock is based on the assumption that market and business conditions will, at the time of the proposed offering, be about as they are today. One major factor that might affect the offering time schedule would be an unexpected major increase in prime interest rates or similar economic upheaval.

In the meantime plans for the offering should commence with the understanding that the offering will only be made if conditions are favorable and that it may be postponed if financial markets or other conditions are unfavorable.

Raymond S. Troubh
Ora C. Roehl

MEMORANDUM OF DEC. 1, 1975

211a

EXHIBIT 1

INCOME STATEMENT
(9 Mos. Ended September 30)
(000's)

	1975	% of Sales	1974	% of Sales
Revenues	$298,600		$286,076	
Expenses:				
Direct Operating	153,759	51.5%	148,643	51.9%
Depreciation and Rental of Vehicles	63,548	21.3	66,823	23.4
Provision for Doubtful Accounts	7,698	2.5	6,308	2.2
Selling G. & A.	$ 37,491	12.6	$ 33,138	11.6
Interest	17,444	5.8	20,336	7.1
Total Expenses	$279,940	93.7%	$275,248	96.2%
Pre-tax Profit	18,660	6.3%	10,828	3.8%
Income Taxes	9,322		4,189	
Net Income	$ 9,338		$ 6,639	
Net Income Per Share after Preferred Stock Dividend	$ 1.31		$ 1.09	

BALANCE SHEET
September 30th
(000's)

	1975	1974
Assets		
Cash	$ 32,617	$ 38,608
Accounts Receivable, Net	73,553	72,396
Finance Lease Receivables	39,018	32,997
Vehicles (Net)	215,208	191,614
Other	81,816	79,587
Total Assets	$442,212	$415,202
Liabilities		
Vehicle Obligations and Other Debt	$220,896	$243,053
Other	$125,446	$100,595
Stockholder Equity	95,870	71,554
Stockholder Equity as % of Total Capital	30.3%	22.7%

December 15, 1976

M E M O R A N D U M

TO: RICHARD JOYCE SMITH, TRUSTEE

FROM: ORA C. ROEHL
RAYMOND S. TROUBH

We have acted as your financial advisors since the commencement of your Avis trusteeship and, as such, have consulted with you and your various associates, both legal and investment banking, in connection with numerous decisions made regarding the disposal of the Avis shares held by you.

The Trustee made his initial public sale of 1,250,000 Avis shares at $9.25 per share (less an underwriting fee of $.65 per share) on May 27, 1976. A group of 123 underwriters was managed by Goldman, Sachs & Co., Dillon, Read & Co., Inc., and Kidder, Peabody & Co., Inc. Avis shares, listed on the New York Stock Exchange, during 1976 traded in the range of $7 1/2 to $13 1/8, and are currently quoted at around $11 per share.

This public distribution was made in keeping with a January 14, 1976 order of the United States District Court for the District of Connecticut which

"directs the Trustee to begin disposing

of the shares of the Common Stock of Avis held by the Trustee by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisors shall find to be appropriate under all the circumstances and in the best interests of Avis and all its stockholders."

The May 27, 1976 prospectus further stated that:

"the Trustee intends to dispose of the shares of Common Stock to be held by him after the sale of the shares offered hereby by means of additional underwritten public offerings from time to time. However, there can be no assurance that the Trustee might not determine to dispose of such shares by private sales or otherwise pursuant to further orders of the Court."

The decree of the Court also provides that 406,504 shares of the Avis common stock held by the Trustee, received through the conversion of $5,000,000 of Avis preferred stock held by ITT, should not be sold prior to December 31, 1977 at a price less than $12.30 a share, which was the book value of Avis common stock on December 31, 1975.

The Trustee presently holds 3,743,504 Avis shares, constituting approximately 47% of the outstanding Avis shares, having a total market value, at current quotations, of approximately $41 million.

Avis is enjoying a fine year and many Wall Street observers expect record earnings for 1976 and forecast higher earnings for 1977. The only serious problems encountered this

year have been substantial foreign currency write-offs over which Avis had little or no control, and the disclosure of certain "questionable payments".

We have previously advised you that we believe the prudent course for you, as Trustee, to follow is to periodically sell Avis shares in the public market in underwritten offerings. We have felt this course of action would cause the least disruption of an orderly market in the shares, would be constructive from the point of view of Avis management, and generally would be in the best interests of Avis and its shareholders. We continue to believe that under current market, economic and monetary circumstances, and with due consideration for the operations of the company, a final single sale of all the Trustee's shares at one time would not be in the best interests of shareholders and would most likely not bring in full value for the shares.

We also recognize that there is some prevailing public opinion (represented recently by a comment in Barron's) that the market price of Avis shares has not risen to reflect its increased earnings because of the overhanging block held by the Trustee. However, we do not believe that it has been a major reason for Avis's less than spectacular market performance. We have always been aware of this problem but we feel that other factors that must be weighed in determining your distribution program are of overriding importance. A

single sale of the entire Trustee holding at this time could only be done at an unacceptable discount from current market. We would also point out that the Trustee's shares are already outstanding and so are not a dilution factor in terms of earnings or possible dividend resumption.

We have commented before on your expressed obligation to promote a viable and independent Avis. To preserve that independence, we believe that Avis should take steps to strengthen its charter and by-law provisions against hostile takeovers. This is not uncommon in American industry today and dozens of cases can be cited of companies creating staggered boards, providing for cumulative voting and requiring large percentage votes for merger that the Board does not approve. Avis has an outstanding outside working Board of Directors which has worked successfully with you to give Avis a rebirth. Adoption of the suggested charter reforms will enhance these efforts, still allow them to consider bona fide offers that they deem worthy of consideration, and, in our judgment, redound to the ultimate benefit of shareholders.

Thus, as the Trustee gradually withdraws, the Company will be in a position to protect and defend itself against offers which are not deemed by the then management to be in the best interests of all the stockholders. These steps, it seems to us, are consistent with the Trustee's philosophy of disposing of the shares in a fashion deemed

by him to be in the best interests of Avis and all its stockholders.

We believe that a disposition of the Avis shares through an underwritten public sale during the late spring or summer of 1977, in an amount representing approximately one-half of the Trustee's present holdings, subsequent to the release of audited Avis financial statements and after the annual meeting, would be appropriate, assuming favorable economic and market conditions and the continuation of present trends in the company. We also believe that the performance of the original underwriting syndicate and its managers was perfectly satisfactory and should be retained.

While we recognize that financial matters such as dividends and capital formation are the particular responsibility of the Board, and not the Trustee, we nevertheless feel compelled to comment on these two points. Recalling the very tight money bind in which Avis found itself two years ago, we urge that Avis take advantage of present easier monetary conditions and issue approximately $50 million of long term debt as soon as possible. We do not believe opportunities like the present will prevail for too long a time.

We also believe that Avis should reinstitute the payment of dividends. Its earnings certainly warrant a resumption and such a move would demonstrate confidence on the

directors' part that the improvement in Avis operations are likely to continue. We believe investors are now income conscious to a far greater degree than in the past and that a program of steadily increased dividends will have a positive impact upon the market for Avis shares.

We recognize that you may, from time to time, receive offers for all or part of your Avis holdings. Some of these offers may include similar offers to the public shareholders. While we shall continue to examine each such offer on its merits, we believe that, absent extraordinary circumstances, you should maintain your present course of action.

As the year 1977 unfolds, it is our intention to continue to monitor the operations of the Company and review its future financial projections and objectives so that we may suggest to you a schedule and plan outlining the steps that might be considered subsequently for the ultimate disposition of the remaining Avis shares then held by the Trustee.

ORA C. ROEHL

RAYMOND S. TROUBH RST.

TRUSTEE ORDER NO. 1
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U.S. DISTRICT COURT
HARTFORD, CONN.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Plaintiff	:	
v.	:	
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND THE HARTFORD FIRE INSURANCE COMPANY Defendants	:	CIVIL NO. 13,320
and	:	
AVIS, INC. Defendant Intervenor	:	

TRUSTEE ORDER NO. 1

1) The Final Judgment of this court entered September 24, 1971, and consented to by the parties having ordered and directed, inter alia, that the defendant, International Telephone and Telegraph Corp. (ITT), divest within three years from the date of said judgment all of its interest, direct and indirect, in the Hartford Fire Insurance Co. (Hartford) or in the alternative all of its interest in ITT Avis, Inc. (Avis), ITT Levitt and Sons, Inc. (Levitt), ITT Hamilton Life Insurance Co. and ITT Life Insurance Co. of New York (Hamilton Life), and their subsidiaries, and

2) Having ordered and decreed that if such divestiture were not carried out within three years the court should place in the control of a trustee named and approved by the court the then undivested interest of ITT in Hartford or in the

alternative in Avis, Levitt, and Hamilton Life, all as set out in Section IV(E) of said decree, and

3) The court after hearing finding that ITT has not met the divestiture requirements of said Section IV(E), and

4) Finding that to carry out and effectuate said decree it is necessary, inter alia, to appoint in accordance with said Section IV(E) a trustee of all ITT's undivested interest in Avis and its subsidiaries,

I. IT IS ORDERED that Richard Joyce Smith of Southport, Connecticut, (the Trustee) be and hereby is appointed to manage and dispose of ITT's undivested interest in Avis and its subsidiaries (the Trust Property) under the supervision of this court and subject to the provisions of this Order.

II. ITT is hereby ordered and directed to irrevocably convey the Trust Property to the Trustee promptly upon receipt of this Order and to effect the resignation of all ITT personnel from the board of directors of Avis. ITT is ordered to execute and deliver to the Trustee or his delegates any instruments deemed advisable by the Trustee to effect the purposes of this Order, and ITT shall instruct its officers, employees, accountants, and legal counsel to cooperate with the Trustee in performing his duties hereunder.

III. The Trustee shall immediately consider a possible disposition of the Trust Property by way of an exchange offer

alternative in Avis, Levitt, and Hamilton Life, all as set out in Section IV(E) of said decree, and

3) The court after hearing finding that ITT has not met the divestiture requirements of said Section IV(E), and

4) Finding that to carry out and effectuate said decree it is necessary, inter alia, to appoint in accordance with said Section IV(E) a trustee of all ITT's undivested interest in Avis and its subsidiaries,

I. IT IS ORDERED that Richard Joyce Smith of Southport, Connecticut, (the Trustee) be and hereby is appointed to manage and dispose of ITT's undivested interest in Avis and its subsidiaries (the Trust Property) under the supervision of this court and subject to the provisions of this Order.

II. ITT is hereby ordered and directed to irrevocably convey the Trust Property to the Trustee promptly upon receipt of this Order and to effect the resignation of all ITT personnel from the board of directors of Avis. ITT is ordered to execute and deliver to the Trustee or his delegates any instruments deemed advisable by the Trustee to effect the purposes of this Order, and ITT shall instruct its officers, employees, accountants, and legal counsel to cooperate with the Trustee in performing his duties hereunder.

III. The Trustee shall immediately consider a possible disposition of the Trust Property by way of an exchange offer

of the Trust Property for outstanding securities of ITT and shall report his conclusions on the feasibility of such a plan to the court within 30 days. Contemporaneously, the Trustee shall also study such other alternative methods of disposition of the Trust Property as he deems fit, taking into account the present financial condition of Avis and its continued viability, and shall report his recommendations for a plan of disposition to the court within 60 days.

IV(A). Until the consummation of a plan of divest[illegible]re hereunder the Trustee shall vote the Avis stock held by him at his discretion, having in mind the best interests of the shareholders of Avis in their capacity as such.

IV(B). To carry out the duties imposed upon him by this Order the Trustee, without regard to any legal restriction that might otherwise be applicable, shall be entitled:

a. To act in any jurisdiction without giving bond or other security and without making any periodic accounting to ensure the faithful performance of fiduciary obligations.

b. To employ any persons, firms, or corporations as depositaries, custodians, investment counsel, brokers, accountants, attorneys, experts, and agents; to rely upon their conduct or advice; and to pay them reasonable compensation.

c. To rely, in acting hereunder, upon any letter, notice, or other paper and upon any telephone, telegraph, or other message if believed to be genuine and to be signed, sealed, acknowledged, presented, sent, or given by or on behalf of the proper person, firm, or corporation, without incurring liability for any action or inaction based thereon.

d. To use his best judgment in exercising the powers, rights, and discretions conferred or in performing the duties imposed hereby or by law and, in order to feel free in doing so, to be exempt from personal liability, to the maximum extent permitted by law, for any action taken or omitted in good faith.

e. To acquire and administer any property, if acceptable, which ITT or any other person may add to the Trust hereunder.

f. To continue to have and exercise, after the termination in whole or in part of the Trust hereunder and until the final distribution of the property thereof, all powers, rights, and discretions conferred hereby or by law during the existence of such Trust.

IV(C). To the extent not inconsistent with or covered by this Order or any future Order of the court, the Trust to be created by this Order shall be construed and regulated by the laws of the State of New York.

V. Upon application to the court from time to time, the Trustee shall be entitled to fees as set by the court and paid by ITT. The Trustee shall also be entitled to reimbursement from ITT for reasonable expenses incurred by him as Trustee in carrying out his duties.

VI. Except as expressly provided herein, the terms of the Final Judgment in this matter remain in full force and effect. This court retains the power to issue such further orders as may be necessary to implement the purpose to be accomplished by this Order.

Dated at Hartford, Connecticut, this 6th day of January, 1975.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA, Plaintiff,	
-against-	Civil Action No. 13,320
INTERNATIONAL TELEPHONE and TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY, Defendants,	Before The Honorable M. Joseph Blumenfeld, D.J.
and	
AVIS, INC., Defendant Intervenor.	

Accepted and approved
Mar 3, 1975 M. Joseph Blumenfeld, U.S.D.J.

TRUSTEE'S SECOND REPORT
PURSUANT TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This second report, submitted to the Court pursuant to Trustee Order No. 1 dated January 6, 1975, presents for the Court's approval my recommendation of a course of action for the ultimate disposition of the shares of Avis, Inc. common stock which constitute the Trust Property. The program for divestiture which I recommend in my judgment, which is supported by the opinions of my independent financial advisors, is for the best interest of the shareholders of Avis as such and takes into account, as directed by Trustee Order No. 1, the present financial condition of Avis and its continued viability.

II. The program I recommend is as follows:

(a) Subject to the approval of this Court and the newly organized independent Board of Directors of Avis, Inc., International Telephone and Telegraph Corporation (ITT)

shall promptly subscribe to and pay in cash $17,295,000 for 1,487,000 shares of newly issued shares of Avis common stock. Upon issuance of those shares to it, ITT shall promptly transfer them to me as Trustee to be added to the shares held by me and to be subject in all respects to the underlying Consent Decree and Trustee Order No. 1 of this Court. The undertaking of ITT to purchase the additional shares is stated in a letter dated February 21, 1975 addressed to me by Lyman C. Hamilton, Jr., Executive Vice President and Treasurer of ITT, a copy of which is attached to this report marked Exhibit A.

(b) In the absence of drastically changed conditions and circumstances in the interim, I shall not, unless so ordered by this Court, undertake a public sale or sales of the Avis shares in the Trust until after a full year's operation of Avis under the newly constituted Avis Board of Directors which is now completely independent of and beyond the control of ITT. That independent operation began with the first meeting of the newly constituted Avis Board held on January 15, 1975.

(c) In the absence of drastically changed conditions and circumstances, I shall not, unless so ordered by this Court, during the twelve-month period which began on January 15, 1975 accept any private offer for the Avis shares held in the Trust at a price less than $11.63 per share (the price per share to be paid by ITT for the newly issued Avis shares).

(d) Avis, Inc., upon receipt of payment by ITT for the newly issued shares shall immediately pay to ITT $500,000 on account of existing and outstanding loans by ITT and its affiliates totalling $1,500,000 as of the date of this report. Avis shall further agree as part of this program and settlement to pay the $1,000,000 balance of such loans by December 31, 1975 and shall also agree to use its best efforts to have Avis, Inc. substituted for ITT and ITT affiliates as guarantor of various

loans by others to Avis affiliates amounting to approximately $1,550,000.

(e) ITT shall also pay consulting fees amounting to $100,000 due two investment banking firms retained by the Avis management to advise on previous proposals for the distribution of the Avis shares held by ITT.

(f) Upon payment by ITT as provided for under this program, Avis, Inc. shall execute to ITT a release from all obligations under a certain letter agreement dated August 13, 1974 relating to the purchase of Avis shares and from any further obligation to maintain the viability of Avis, Inc.

III. The ITT undertaking represents a settlement of a controversy over the obligations of ITT under an agreement with the Avis management made in August, 1974. It was the contention of Avis management that under such agreement ITT's obligation to purchase the additional Avis shares matured when the shares covered by Trustee Order No. 1 were transferred to the Trustee. ITT on the other hand contended that its obligation would not mature until I, as Trustee, disposed of the Trust Property by means other than a private sale of the Avis shares constituting the Trust Property.

It became clear to me that additional equity capital was urgently needed by Avis and that any delay in the settlement of this controversy could cause irreparable damage to Avis, Inc. and its stockholders. Yet a public sale of the Trust Property under present economic conditions, without first strengthening the financial condition of Avis, would be difficult if not impossible, except on so drastic a give away basis as to ruin the market for Avis stock with consequent serious loss to the public shareholders of Avis, and damage to the financial standing of Avis.

To choose the alternative of a private sale of the Trust Property at this time at current market values would be extremely disadvantageous for the existing public shareholders of Avis. To date the only offers received have been two tentative proposals for purchase of the Trust Property at six to seven dollars a share on a basis which forces minority shareholders out at the same price.

A third tentative proposal provides for the purchase by a private group of $25,000,000 principal amount of debentures of Avis due no earlier than 1987 and convertible over a period of five years into Avis Common Stock at $6.00 per share. The proposal is conditioned on the agreement by the Trustee to grant a five year option to Avis to purchase the Avis shares held by the Trustee at $6.00 per share plus one-half of the amount by which the market price at the time of exercise might exceed $6.00. The shares optioned would be used for employee stock purchase and bonus plans, and to the extent not so utilized, the remainder would be offered to shareholders. At the end of the option period I would have to sell any Avis shares that I then held to this group at the lower of $6.00 per share or the then market price. I do not consider such a proposal feasible for various reasons. It would involve too long a delay in termination of the Trust, too great a dilution of Avis common stock and an unfair advantage to the initiating group.

ITT began its divestiture program by selling 48 percent of the voting shares of Avis in two public offerings. The first, completed in June, 1972, disposed of 1,400,000 shares at a price of $38 a share to the purchasers. The second, completed in January, 1973, disposed of 1,500,000 shares at a price of $47 a share to the purchasers. Avis common stock was listed on the New York Stock Exchange on August 14, 1972. In connection with that listing ITT agreed with the Exchange

that in the course of carrying out its complete divestiture of the Avis shares, ITT would use its best efforts to see that no individual, corporation or affiliated group would acquire in the aggregate more than ten percent of Avis's outstanding shares. Reference to this agreement was made in the Avis prospectus dated January 29, 1973. Whatever may have been the intention in making this disclosure it could reasonably have been taken by a purchaser as indicating an intention by ITT to distribute all of its Avis stock through public offerings. At the very least, it is reasonable to assume that a substantial number of those who bought Avis shares from ITT would not have done so if they had known the remaining majority block of that stock would be sold privately to a single person or company.

In my opinion, the use of private offers at this time to overcome Avis's need for additional equity capital would be unfair and inequitable to the minority stockholders of Avis and is not required to comply with the Consent Decree. As stated in my first report to the Court control of Avis by ITT has been effectively and permanently terminated. Public Avis stockholders should not be victimized by further punitive measures against ITT.

IV. My independent financial advisors, Raymond S. Troubh and Ora C. Koehl, have made an intensive study and analysis of Avis management, operations and financial condition. They have concluded, and have so advised me, that a substantial infusion of additional equity capital is urgently needed and that the purchase of additional shares by ITT under the program I recommend is the only possibility for such additional capital within the time required unless the Trust Property is immediately sold at a tremendous sacrifice. They have further advised me that on the basis of their discussions with representatives of Avis management they believe that the infusion

of additional equity of $17,295,000 will resolve Avis's immediate financial needs and enable it to make a good beginning in its transformation from an ITT subsidiary to a profitable independent operating company.

In addition to the infusion of new capital, they list the following factors which they believe should contribute to a significant improvement in Avis operations during the next twelve months:

1. A substantial decline in interest rates.

2. An improvement in Avis' Canadian operations.

3. The consolidation and streamlining of Avis' truck operations.

4. The realization of economies under the Wizard System.

5. The continuation of management programs aimed at cash conservation and overall operating efficiencies.

6. The gradual improvement in general economic conditions.

They conclude that as Avis's immediate financial problems give promise of being resolved, the Avis management should now be given time to demonstrate its ability to operate Avis as an independent company and that as improvement in Avis's operations becomes evident in the financial community a much better climate should emerge for the disposition of the Avis stock to the substantial benefit of Avis and its public shareholders.

It is therefore my opinion that with the infusion of the $17,295,000 in new capital, Avis, Inc. can operate as a viable entity independent of ITT. In my opinion the program I propose is the only way to secure an immediate infusion of needed capital for the independent operations of Avis. The program is designed to avoid protracted litigation at the expense of the company. Indeed such protracted litigation would compel

me to sell the Trust Property privately without any bargaining power whatsoever, at great sacrifice to the public stockholders. Any settlement must be based upon a compromise. Unless there were to be a dramatic turn for the worse in the fortunes of Avis, I would not recommend a private sale at less than $11.63 per share because of the loss it would inflict upon those still holding the Avis stock they purchased in the public offerings.

Finally under the settlement, I retain complete flexibility to discharge my duties as Trustee. Should some unforeseen development occur which would require me as Trustee to come to the Court with some new proposal for disposition of the Trust Property I am free under the program to do so.

WHEREFORE, I respectfully request that the Court grant its approval of the program for disposition of the Trust Property as herein set forth.

Respectfully submitted,

Richard Joyce Smith
Trustee

Robert C. O'Brien
Peter D. Lowenstein
F. Timothy McNamara

Of Counsel

Dated: Hartford, Connecticut
March 3, 1975

World Headquarters
320 Park Avenue
New York N.Y. 10022
Telephone (212) 752-6000

Lyman C. Hamilton, Jr.
Executive Vice President and Treasurer

February 21, 1975

Richard Joyce Smith, Esq.
Whitman & Ransom
522 Fifth Avenue
New York, N. Y. 10036

Dear Mr. Smith:

As we have discussed, ITT is willing to resolve the outstanding questions relating to its letter to Avis, Inc., signed by me in its behalf and dated August 13, 1974. As you know, ITT has interpreted its obligation to subscribe and pay for to-be-issued shares of Avis Common Stock having an aggregate value of approximately $17,295,000, as becoming effective only when and if you as Trustee dispose of ITT's beneficial interest in Avis, held by you as Trustee, by other than a private sale.

You have now informed us that you intend to report to the Court that in your opinion Avis, Inc. can operate as an independent company with the infusion of the $17,295,000 in equity capital. You have also told us that it is your present intention to recommend to the Court that ITT's stock interest in Avis be distributed by public sale.

In view of this intent and notwithstanding ITT's interpretation of its agreement of August 13, 1974, ITT is now willing immediately to subscribe and pay for the "presently authorized but unissued shares of the Common Stock...of Avis, Inc...having an aggregate value of approximately $17,295,000..." at a purchase price per share calculated at the book value of Avis' issued and outstanding Common Stock at June 30, 1974, being $11.63 per share.

In addition, although ITT does not believe it is contractually or morally obligated to pay certain fees for consulting services rendered Avis management and its non-ITT affiliated Board members totalling $100,000, nonetheless, in the interests of resolving all outstanding disputes, ITT is willing to pay these fees.

EXHIBIT A

As to the $5 million in Avis Series A Preferred Stock purchased by ITT in 1974, ITT has always recognized that this constitutes an interest in Avis, Inc. held by ITT which must be divested pursuant to the 1971 Final Judgment. We believe, however, that the manner of divestiture of this preferred stock interest in Avis, Inc. can best be determined after you have established a method of final disposition of ITT's common stock interest in Avis.

The foregoing commitment to subscribe to and pay for additional Avis Common Stock will, of course, increase ITT's interest in Avis, Inc. ITT's commitment to subscribe to the additional Common Stock was made in reliance upon the following:

1. Your present intent, stated to us, that in your reports to the Federal District Court, District of Connecticut, you will recommend against the sale of ITT's interest in Avis Common Stock (including the newly subscribed to shares) by way of public distribution until after a period of approximately 12 months of Avis operations independent of ITT support, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.; and

2. Your present intent, stated to us, that in your reports to the Court you will recommend against the acceptance of any private offer for ITT's interest in Avis Common Stock during a period of approximately the next 12 months at a price per share less than the book value of Avis Common Stock at June 30, 1974 being $11.63 per share, subject, of course, to your obligation as Trustee to consider all offers and options for the disposition of ITT's Avis stock which you may believe to be in the best interest of all the shareholders of Avis, Inc.

The subscription to the additional Avis Common Stock will be subject to the following conditions:

1. An agreement from Avis, Inc. that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

2. Your report to the Court that it is your understanding as Trustee that ITT's subscription to and payment for the additional $17,295,000 in Avis Common Stock and the payment of the $100,000 in consulting fees will fully satisfy and discharge any and all obligations of ITT to Avis by reason of the letter, dated August 13, 1974, and any other obligations, if any, of ITT to Avis, Inc. to support the viability of Avis, Inc.;

3. An agreement from Avis, Inc. to repay the existing loans by ITT and its affiliates to Avis and/or its affiliates amounting to approximately $1.5 million, of which $500,000 payable on demand will be offset against the $17,295,000, the subscription price to be paid to Avis, Inc. by ITT, and the remainder of approximately $1 million will be repaid as soon as Avis' loan agreements, as they exist or may be amended, permit, but in any event not later than December 31, 1975; and

4. An agreement from Avis, Inc. to offer as soon as Avis' loan agreements, as they exist or may be amended, permit, replacement with Avis guarantees of the existing guarantees by ITT and ITT affiliates of loans to Avis affiliates, aggregating approximately $1.55 million, and to use its best efforts to obtain promptly all necessary agreements from the lenders to permit such replacement.

I trust the foregoing will be acceptable as an amicable resolution of our controversy.

Very truly yours,

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

By [signature]

SIGNED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	:	Civil Action No. 13,320
Plaintiff,	:	Before The Honorable M. Joseph Blumenfeld, D.J.
-against-	:	
INTERNATIONAL TELEPHONE and TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY,	:	
Defendants,	:	
and	:	
AVIS, INC.	:	
Defendant Intervenor	:	

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U.S. DISTRICT COURT
HARTFORD, CONN.

TRUSTEE'S THIRD REPORT PURSUANT
TO TRUSTEE ORDER NO. 1

To The Honorable M. Joseph Blumenfeld
United States District Judge
District of Connecticut

I. This third report is submitted to the Court pursuant to Trustee Order No. 1, dated January 6, 1975, and Trustee Order No. 3, dated January 14, 1976, by which I was authorized to exchange the 50,000 shares of Cumulative Preferred Stock, Series A, $100 stated value, of Avis, Inc. which I held for shares of Avis Common Stock at the December 31, 1975 book value ($12.30 per share), and directed to begin the disposition of the Trust Property by way of a series of public offerings beginning in the first half of 1976.

II. On May 27, 1976, a public offering of 1,250,000 shares of Avis Common Stock, constituting a portion of the Trust Property, was made by me as Trustee through underwriters for whom Goldman, Sachs & Co., Dillon, Read & Co. Inc., and Kidder, Peabody & Co. Incorporated acted as representatives. The offering was made at $9.25 per share (the last reported sale price on the New York Stock Exchange on that day) less an underwriting discount of $.65 per share. The 50,000 shares of

Avis Preferred Stock were exchanged for 406,504 newly issued shares of Avis Common Stock on May 27, 1976, simultaneously with the offering of the shares of Avis Common Stock.

III. By virtue of these transactions the number of shares of Avis Common Stock held in trust has been reduced to 3,743,504 shares or approximately 47% of the total outstanding shares.

IV. The net proceeds of the public sale, amounting to $10,750,000, were received by me at the closing held June 3, 1976, and deposited in the trust account. On June 4, 1976, I remitted $10,250,000 to International Telephone and Telegraph Corporation.

V. At the present time there is $643,681.24 in cash in the trust account and a certificate of deposit of Morgan Guaranty Trust Company in the principal amount of $150,000 due July 19, 1976. As noted in the Registration Statement, it is estimated that the expenses incurred in connection with the public distribution to be borne by International Telephone and Telegraph Corporation will amount to approximately $389,000. Subject to approval of the Court, I have been authorized by International Telephone and Telegraph Corporation to pay such expenses on their behalf out of the cash balance remaining in the trust account.

VI. Within the next several weeks I shall submit to the Court an application for approval of payment of these expenses in the amounts actually incurred.

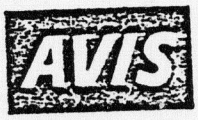
Respectfully submitted,

Richard Joyce Smith Trustee
Trustee

Dated: New York, New York
June 7, 1976

PROXY
238a

AVIS, INC./WORLD HEADQUARTERS / 900 OLD COUNTRY ROAD, GARDEN CITY, NEW YORK 11530 / (516) 222-3000



Colin M. Marshall
President and
Chief Executive
Officer

May 4, 1977

Dear Stockholder:

You are cordially invited to attend our Annual Meeting of Stockholders which will be held on Wednesday, May 25, 1977, at 2:00 P.M., at Avis World Headquarters, 900 Old Country Road, Garden City, New York.

Several proposals by management will be voted on by our stockholders at the meeting. In addition to the agenda items set forth in the attached Notice of Meeting and Proxy Statement, I will have the opportunity to report on accomplishments of the past year as well as the status of the Company's affairs. My report will be followed by an open discussion period during which your questions and comments will be welcome.

The 1976 Annual Report of the Company has already been mailed to you. You are urged to read the Annual Report and this Proxy Statement so that you may be informed about any business that may come before the meeting.

Enclosed are a proxy and return envelope. Whether or not you plan to attend the meeting in person, you should take the steps necessary to insure that your shares are represented. You can do this by completing, dating, signing and returning the proxy. If you attend the meeting you may, if you so desire, withdraw your proxy and vote in person.

I hope that you will be present and that I will have the opportunity of meeting you personally.

Sincerely,

PROXY

239a

AVIS, INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To be held May 25, 1977

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Avis, Inc. (the "Company") will be held at the offices of the Company, 900 Old Country Road, Garden City, New York, on May 25, 1977, at 2:00 P.M., for the following purposes:

(1) To elect twelve (12) directors of the Company to hold office for terms of one to three years and until their respective successors shall have been elected and shall have qualified or, if Item (2) is not approved, until the next Annual Meeting of Stockholders and until their respective successors shall have been elected and shall have qualified;

(2) To act upon a proposal to amend the By-laws of the Company to provide for the division of the Board of Directors into three classes, the terms of which expire at successive Annual Meetings of Stockholders, to provide that directors may be removed from office only for cause and to increase the number of directors required to constitute a quorum to a majority of the entire Board, and to amend the Certificate of Incorporation of the Company to require a special stockholder vote to amend the foregoing By-law provisions;

(3) If the proposal described in Item (2) is approved, to act upon a proposal to amend the Certificate of Incorporation of the Company to require a special director or stockholder vote for certain mergers, consolidations and similar transactions under specified circumstances and for any alteration or repeal of such provisions;

(4) To elect Arthur Andersen & Co. independent auditors of the Company for the year 1977; and

(5) To consider and transact such other business as may properly come before the meeting or any adjournments thereof.

The Board of Directors has fixed the close of business on April 19, 1977 as the record date for the determination of stockholders entitled to notice of and to vote at the meeting. The stock transfer books of the Company will not be closed.

Stockholders are urged to attend the meeting in person. If you are not able to do so, please fill in, sign and date the accompanying proxy and return it promptly to the Company in the enclosed envelope. No postage is required if mailed in the United States.

By Order of the Board of Directors,

DAVID I. SCHAFFER
Secretary

Garden City, New York
May 4, 1977

AVIS, INC.

900 Old Country Road
Garden City, New York 11530

PROXY STATEMENT

ANNUAL MEETING OF STOCKHOLDERS

May 25, 1977

This Proxy Statement is furnished in connection with the solicitation by the management of Avis, Inc. (the "Company") of proxies to be used at the 1977 Annual Meeting of Stockholders of the Company to be held on May 25, 1977, and at any adjournments thereof. If a proxy in the accompanying form is properly executed and returned, the shares of common stock represented thereby will be voted in accordance with the instructions of the stockholder or, if no instructions are given, in accordance with the recommendations of management. All valid proxies received by the Company and not revoked will be voted. Any stockholder may revoke his proxy by giving written notice to the Secretary of the Company reasonably in advance of the meeting or by attending the meeting and personally voting his shares.

Only stockholders of record as of the close of business on April 19, 1977, the record date for the meeting, will be entitled to vote at the meeting and any adjournments thereof. As of that date, there were outstanding 7,893,504 shares of the Company's common stock, each entitled to one vote at the meeting.

The Company will pay the entire cost of the solicitation of proxies. Solicitation will be primarily by mail, although directors, officers and employees may also solicit by telephone, telegraph or personal contact, but at no additional compensation. In addition, arrangements may be made with banks, brokerage houses, custodians, nominees, fiduciaries and others holding shares on behalf of the beneficial owners of such shares to send proxies and proxy material to their principals, and the Company will reimburse them for their expenses in doing so.

This Proxy Statement and the accompanying form of proxy will be mailed on or about May 4, 1977 to the Company's stockholders of record on the record date.

PRINCIPAL STOCKHOLDER

As of the close of business on the record date for the meeting, 3,743,504 shares of the Company's common stock, representing approximately 47% of such outstanding shares, were held by Richard Joyce Smith, as Trustee (the "Trustee") appointed by the United States District Court for the District of Connecticut (the "Court") pursuant to the terms of a consent decree entered in *United States of America v. International Telephone and Telegraph Corporation and The Hartford Fire Insurance Company and Avis, Inc.*, which required International Telephone and Telegraph Corporation ("ITT") to divest itself of all of its interest, direct and indirect, in the Company and certain other ITT subsidiaries.

Because ITT had not disposed of its remaining interest in the Company by the date specified in the consent decree, on January 6, 1975 Mr. Smith was appointed Trustee and on January 8, 1975 ITT transferred its then remaining 3,100,000 shares of the Company's common stock and $5,000,000 stated value of the Company's Series A Preferred Stock to the Trustee, to manage and dispose of such stock under the supervision of the Court. On April 3, 1975, with the approval of the Court, the Company sold to ITT, and ITT simultaneously transferred to the Trustee, an additional 1,487,000 shares of the Company's common stock. On May 27, 1976, pursuant to Court order issued on April 23, 1976, the Trustee exchanged the Series A Preferred Stock held by him for an additional 406,504 shares of the Company's common stock at the exchange price of $12.30 a share (being equal to the higher of the $12.30 book value per share of the Company's common stock as of December 31, 1975 or the $9.25 per share initial public offering price of the common stock sold by the Trustee in May 1976 as described below).

An order of the Court issued on January 14, 1976 directs the Trustee to begin disposing of the shares of the Company's common stock held by him by way of a series of public offerings beginning in the first half of 1976 and continuing from time to time thereafter at such intervals and in such amounts as the Trustee and his financial advisors find to be appropriate under all of the circumstances and in the best interests of the Company and all its stockholders. On May 27, 1976, pursuant to such order, the Trustee sold in an underwritten public offering 1,250,000 shares of the Company's common stock, thereby reducing his holdings from approximately 61% to approximately 47% of the outstanding common stock, after giving effect to the exchange of the Series A Preferred Stock for common stock described above.

The Company has been advised by the Trustee that he currently intends to dispose of the remaining common stock of the Company held by him (other than any shares sold pursuant to the ITT Incentive Plan described under "Certain Transactions—ITT Incentive Plan") by means of additional public offerings from time to time. The Court's order of April 23, 1976 incorporates an agreement between ITT and the Trustee that the Trustee will not until after December 31, 1977 dispose of any of the common stock received in exchange for Series A Preferred Stock for a price per share less than the $12.30 a share exchange price therefor. There can be no assurance that the Trustee might not determine to dispose of part or all of the common stock held by him by private sales or otherwise pursuant to further orders of the Court.

The Trustee currently may be deemed to "control" the Company within the meaning of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended. By order dated May 3, 1977, the Court found that it is within the discretion of the Trustee to vote the shares of the Company's common stock held by him in favor of the proposals described in Items Nos. 2 and 3 herein relating to amendment of the Company's Certificate of Incorporation and By-laws and in his discretion upon all other matters upon which action is taken at the Annual Meeting of Stockholders. The Company has been informed by the Trustee that he intends to vote all shares of the Company's common stock held of record by him for the election of the nominees for director set forth herein, for the proposals described in Items Nos. 2 and 3, for the election of Arthur Andersen & Co. as independent auditors of the Company and in his discretion upon any business not described herein that may properly come before the meeting or any adjournments thereof.

Except as set forth above, no person owns of record or, to the knowledge of the Company, owns beneficially, more than 10% of the Company's outstanding common stock.

ITEM No. 1—ELECTION OF DIRECTORS

Twelve directors, constituting the entire Board of Directors, are to be elected at the meeting. If the proposal described in Item No. 2 below to classify the Board of Directors is approved by the stockholders, four nominees will be elected as Class I directors to serve an initial term of one year, four nominees will be elected as Class II directors to serve an initial term of two years and four nominees will be elected as Class III directors to serve an initial term of three years. Each director would serve until his respective successor is elected and qualified. Following the initial term of each director, his successor would serve for a term of three years and until a successor is elected and qualified, so that, barring death, resignation or removal, each year one-third of the Board would be elected. If the classification proposal is not approved by the stockholders, each director will be elected to serve until the next Annual Meeting of Stockholders and until his respective successor is elected and qualified. The persons named in the enclosed proxy, who have been designated by management, will vote the shares represented by duly executed proxies for the election of management's nominees to the respective classes of directors indicated below unless authority to do so is withheld. In the event that one or more of the nominees becomes unavailable for election (a situation which management does not now anticipate), the shares represented by proxies will be voted, unless authority is withheld, for such other person or persons as may be designated by management, and management may determine to reapportion the remaining nominees named below among the three classes of directors.

Assuming that the proposal described in Item No. 2 below to classify the Board of Directors is approved by the stockholders, nominees for election to the Board of Directors will be divided into classes as follows:

Class I (To serve until the 1978 Annual Meeting of Stockholders)	Class II (To serve until the 1979 Annual Meeting of Stockholders)	Class III (To serve until the 1980 Annual Meeting of Stockholders)
Alva T. Bonda	Drummond C. Bell	Robert W. Haack
William W. Lyon	William E. Fruhan, Jr.	John J. Scanlon
Colin M. Marshall	Rodney C. Gott	Olcott D. Smith
Robert C. O'Brien	Dr. Eli Shapiro	Richard Joyce Smith

Further information concerning the nominees appears below:

Name of Nominee	Principal Occupation and Business	Served as a Director Since	Shares of Avis, Inc. Common Stock Beneficially Owned as of May 3, 1977
Drummond C. Bell(2)	Chairman and Chief Executive Officer, National Distillers and Chemical Corporation	1976	200
Alva T. Bonda(1)(3)(5)	President, Cleveland Baseball Co.	1972	500
William E. Fruhan, Jr.(4)	Associate Professor, Harvard University Graduate School of Business Administration	1976	500
Rodney C. Gott(2)(3)	Chairman and Chief Executive Officer, AMF Incorporated (manufacturer of industrial and leisure time products)	1976	100
Robert W. Haack(1)(3)(4)	Chairman and Chief Executive Officer, Lockheed Aircraft Corporation; former President, New York Stock Exchange, Inc.	1973	1,000
William W. Lyon(1)(2)(5)	Senior Vice President, Irving Trust Company	1972	100
Colin M. Marshall(1)(2)	President and Chief Executive Officer of the Company	1971	6,666(6)
Robert C. O'Brien(4)(5)	Partner, Whitman & Ransom, Attorneys-at-Law	1975	None

Name of Nominee	Principal Occupation and Business	Served as a Director Since	Shares of Avis, Inc. Common Stock Beneficially Owned as of May 3, 1977
John J. Scanlon(1)(2)(5)	Director of various corporations; retired Executive Vice President and Chief Financial Officer, American Telephone and Telegraph Company	1975	1,000
Dr. Eli Shapiro(1)(2)(5)	Director and Vice Chairman, The Travelers Corporation (engaged in the life, accident and health, workmen's compensation and liability insurance businesses); Alfred P. Sloan Professor of Management, Massachusetts Institute of Technology	1975	500
Olcott D. Smith(4)	Of counsel to Day, Berry & Howard, Attorneys-at-Law; former Chairman, Executive Committee, Aetna Life and Casualty Company	1975	1,000
Richard Joyce Smith(1)(2)(3)	Partner, Whitman & Ransom, Attorneys-at-Law; Trustee, New York, New Haven & Hartford Railroad, in reorganization	1975	None(7)

(1) Member of Executive Committee.

(2) Member of Finance Committee.

(3) Member of Compensation Committee.

(4) Member of Audit Committee.

(5) Member of Pension Review Committee.

(6) Does not include 100 shares held of record by Mr. Marshall's wife. Mr. Marshall disclaims beneficial ownership of such shares.

(7) As of the record date, Mr. Richard Joyce Smith, as Trustee appointed by the United States District Court for the District of Connecticut to manage and dispose of ITT's interest in the Company, was owner of record of 3,743,504 shares of the Company's common stock (see "Principal Stockholder").

Each of the above nominees is currently a director of the Company, and each was elected to his current term of office at the 1976 Annual Meeting of Stockholders except for Mr. Drummond C. Bell, who was elected to the Board at a regular meeting thereof held on November 30, 1976, and Messrs. William E. Fruhan, Jr. and Rodney C. Gott, who were elected to the Board at a regular meeting thereof held on December 21, 1976. Mr. Bell has served as Chief Executive Officer of National Distillers and Chemical Corporation for more than the past five years and as Chairman of such company since December 1975. Mr. Fruhan has served as an Associate Professor at the Harvard University Graduate School of Business Administration since 1974 and served as an Assistant Professor at that School from 1970 to 1974. Mr. Gott has served as Chairman and Chief Executive Officer of AMF Incorporated for more than the past five years.

ITEMS Nos. 2 & 3—PROPOSED AMENDMENTS TO THE CERTIFICATE OF INCORPORATION AND BY-LAWS

As described under "Principal Stockholder," Mr. Richard Joyce Smith, who currently holds as Trustee approximately 47% of the Company's outstanding common stock, has indicated his intention to continue disposing of such shares by way of a series of public offerings which will eventually result in the public ownership of all of the Company's common stock. At a meeting of the Finance Committee of the Board of Directors in July 1976, the Trustee suggested that the Company consider implementing, prior to the Trustee's next disposition of shares, procedures designed to discourage and make more difficult unfriendly takeover attempts, in order to help insure that the Company will remain an independent public entity for a reasonable period of time following his sale of the Company's stock. After consultation with management and upon the recommendation of a committee of directors who studied the matter, the Board of Directors determined that it is desirable to protect the Company by provisions of the type proposed herein against the threat of a takeover attempt which the Board may consider to be not in the best interests of the Company and its stockholders during and following the Company's transition to complete public ownership. The proposed amendments of the Company's Certificate of Incorporation and By-laws are intended, in general, to make more difficult, and therefore discourage, attempts by others to acquire control of the Company, through acquisitions of stock or otherwise, in transactions not approved by the Company's Board of Directors. Neither the Company nor the Trustee is aware of any pending or proposed transaction that would be affected by the proposed amendments.

The proposed amendments may have a significant impact on the rights of stockholders and should be considered carefully. While a tender offer or other takeover attempt may be made at a price substantially above then current market prices, such offers frequently are made for less than all of the outstanding stock of the target company and, accordingly, may present stockholders with the alternatives of partially liquidating their investment at a time that may be disadvantageous or retaining an investment in an enterprise under substantially different management with objectives which may not be identical with those of the remaining public stockholders. Such concentration of control could also deprive the remaining public stockholders of the benefits of listing on the New York Stock Exchange and even of public reporting under the Securities Exchange Act of 1934, as amended.

On the other hand, the overall effect of the proposals would be to render more difficult the accomplishment of mergers and similar transactions by a person acquiring a substantial stock interest in

the Company and thus to make more difficult the removal of the Company's management. These proposals could deter a change in the management or control of the Company that would be advantageous to the Company and its stockholders. A non-negotiated tender offer at a premium over market price, which might extend to all public shares or might otherwise be favorable to public stockholders, could be discouraged by the proposed amendments. Management would be made more secure and might be able to resist changes which the stockholders might otherwise have the power to impose.

Under the Company's present By-laws, the holders of a majority of the outstanding common stock have the power to remove the entire Board of Directors, with or without cause, at any time, and to elect all of the members of the Board of Directors at each Annual Meeting of Stockholders. If the proposed amendments relating to the Board of Directors described in Item No. 2 are adopted, stockholders would not have the power to remove directors without cause and only approximately one-third of the Board of Directors could be elected at each Annual Meeting of Stockholders. Tender offers or other acquisitions of stock for the purpose of acquiring control of the Board of Directors could be discouraged, and proxy contests or other attempts to change management would be impeded.

At present, the holders of a majority of the outstanding common stock have the power to prevent a takeover bid involving a merger or consolidation that such holders consider contrary to the best interests of the stockholders or to approve such a takeover bid that they consider favorable. If the proposed amendments relating to takeover bids described in Item No. 3 are adopted, the Board of Directors will have the power to impose an 80% stockholder vote requirement for approval of these and other types of takeover bids that the Board believes are not in the best interests of the Company, enabling the holders of 20% plus one share of the Company's outstanding common stock to prevent a takeover bid even though approved by the holders of a majority of the outstanding shares. The immediate effect of these amendments would be to give the Trustee the power to veto any takeover attempt so long as one-third of the other directors vote with the Trustee and he continues to hold more than 20% of the Company's outstanding common stock, a power the Trustee does not technically have at present as the holder of 47% of the outstanding shares.

The Board of Directors believes that, with the Board consisting at present almost entirely of persons who are not officers or employees of the Company, it is unlikely that the amendments would result in perpetuation of the Company's present officers under circumstances detrimental to the stockholders, although stockholders should consider that the Board's determinations with respect to takeover bids might be influenced by directors' self-interest in remaining directors of the Company.

The Board of Directors has concluded that the potential benefits of the proposed amendments outweigh any possible disadvantages thereof and the Board of Directors unanimously recommends approval of the proposals described below.

Item No. 2—Amendment of the By-laws to Provide for Classification of Directors, Removal of Directors Only for Cause and a Majority Quorum Requirement for Directors; and Amendment of the Certificate of Incorporation to Restrict the Power to Amend such By-laws

The Board of Directors recommends that the stockholders adopt a resolution amending the By-laws of the Company (i) to provide that the Board of Directors shall consist of not fewer than nine nor more than

15 directors, with the exact number to be determined from time to time only by the vote of a majority of the Board of Directors and (ii) to classify the directors with respect to the time during which each will hold office by dividing the directors into three classes, to be designated as Classes I, II and III. This proposed amendment is embodied in a new Section 3.2 of Article 3 of the By-laws, set forth in Exhibit A hereto and incorporated herein by reference. Under the present By-laws, all directors are elected annually and the number of directors may be changed from time to time by action of the Board of Directors or the stockholders.

The Board has currently fixed the number of directors at twelve. Accordingly, if the amendment described above is adopted, Class I will consist of four directors, each to hold office for an initial term of one year until the 1978 Annual Meeting of Stockholders, Class II will consist of four directors, each to hold office for an initial term of two years until the 1979 Annual Meeting of Stockholders, and Class III will consist of four directors, each to hold office for an initial term of three years until the 1980 Annual Meeting of Stockholders. Each director shall serve until his successor shall have been elected and shall have qualified or until his earlier death, resignation or removal. At each Annual Meeting of Stockholders following the 1977 Annual Meeting, directors elected to succeed those in the class whose terms then expire will be elected for terms expiring three years later, so that the term of office of one class of directors will expire each year. If the number of directors is modified, any increase or decrease in directorships would be apportioned among the classes so as to make all classes as nearly equal in number as possible.

Since the Board of Directors was reconstituted in 1975 following ITT's transfer of its remaining interest in the Company to the Trustee, the membership of the Company's Board of Directors has been relatively constant, with a majority of the nominees for election at each Annual Meeting of Stockholders being persons who have previously been elected as directors by the stockholders. The Board of Directors believes that the implementation of a classified Board will be beneficial to the stockholders because it will help to insure stability in the membership of the Board and in the management of the affairs of the Company in the future. Barring death, resignation or removal of directors, classification will result in the election of one-third of the directors each year so that, at the next and each ensuing Annual Meeting of Stockholders, a majority of the directors at any time will have been directors of the Company for at least one year. A classified Board will also moderate the pace of any change in control of the Board of Directors by extending the time required to elect a majority of the directors, even if such change in control were to be desired by a majority of the Company's stockholders.

The By-laws of the Company currently provide that any newly created directorships resulting from an increase in the number of directors and any vacancies occurring in the Board for any reason may be filled by vote of a majority of the directors then in office, although less than a quorum, at a meeting of the Board or by a plurality of the votes cast at a meeting of the stockholders. If the proposed classification of the Board described above is approved, then in order to prevent circumvention of such provision by holders of a substantial number of shares, the By-laws will be further amended to delete the present provision authorizing stockholders to fill vacancies occurring on the Board. A director appointed by the Board under such revised provision will hold office until the expiration of the term of the class to which he has been elected and could serve for a term extending beyond the Annual Meeting of Stockholders next succeeding

his appointment by the Board. This proposed amendment is embodied in a new Section 3.4 of Article 3 of the By-laws, set forth in Exhibit A hereto and incorporated herein by reference.

The By-laws of the Company currently provide that any or all of the directors may be removed for cause, by vote of the stockholders or by action of the Board, and without cause, by vote of the stockholders. If the proposed classification of the Board described above is approved, the By-laws will be further amended to provide that directors may be removed, by vote of the stockholders or by action of the Board, only for cause so as to prevent a person who acquires a substantial number of shares from acquiring immediate control of the Board by removing directors without cause. This proposed amendment is embodied in a new Section 3.6 of Article 3 of the By-laws, set forth in Exhibit A hereto and incorporated herein by reference.

The By-laws of the Company currently provide that one-third of the total number of directors, but not less than five, shall constitute a quorum for the transaction of business or any specified item of business. If the proposed classification of the Board described above is approved, then in order to increase the required participation by directors of different classes in meetings of the Board, the Company's By-laws will be further amended to increase the number of directors required to constitute a quorum to a majority of the entire Board. This proposed amendment is embodied in a new Section 3.15 of Article 3 of the By-laws, set forth in Exhibit A hereto and incorporated herein by reference.

The By-laws of the Company further currently provide that the By-laws may be altered, amended, supplemented or repealed, or new By-laws may be adopted, by vote of the stockholders or by vote of the Board, but that any By-laws adopted, altered, amended or supplemented by the Board may be altered, amended, supplemented or repealed by the stockholders. If the proposed classification of the Board and other By-law amendments described above are approved, then in order to prevent modification or repeal of such By-law provisions by holders of a simple majority of the Company's common stock present and voting at a meeting, the Company's Certificate of Incorporation would be amended to provide that the affirmative vote of the holders of 80% of the outstanding shares of all classes of stock of the Company entitled to vote in the election of directors shall be required to alter, amend, supplement or repeal any of the By-law provisions described above, or the Certificate of Incorporation provision requiring an 80% vote for the modification or repeal of such By-laws. This proposed amendment is set forth in a new Article FIFTH of the Certificate of Incorporation and a revised Article 13 of the By-laws, set forth in Exhibit A hereto and incorporated herein by reference.

If the amendments described above are approved by stockholders, it will effectively require at least two Annual Meetings of Stockholders to elect a majority of the Board and it will be more difficult for stockholders to change or remove directors.

The affirmative vote of the holders of a majority of the shares of the Company's common stock represented at the meeting, in person or by proxy, is required for approval of the foregoing proposal as it relates to the By-laws. The affirmative vote of the holders of a majority of the shares of the Company's common stock outstanding and entitled to vote generally in the election of directors is required for approval of the foregoing proposal as it relates to the amendment of the Certificate of Incorporation.

The Board of Directors recommends a vote FOR the adoption of amendments to the By-laws and Certificate of Incorporation of the Company as described above and set forth in Exhibit A.

Item No. 3—Amendment of the Certificate of Incorporation to Require a Special Director or Stockholder Vote for Certain Mergers, Consolidations and Similar Transactions and for any Alteration or Repeal of such Provisions

If the foregoing proposals relating to classification of the Board are approved at the meeting, the Board of Directors will propose that stockholders further amend the Company's Certificate of Incorporation to increase the stockholder vote required to approve certain mergers, consolidations, sales of assets, stock issuances and similar transactions. The provisions of this proposed amendment are embodied in a new section of the Company's Certificate of Incorporation to be designated Article Sixth, as set forth in Exhibit B hereto and incorporated herein by reference. If the stockholders do not adopt the foregoing proposals relating to classification of the Board, the Board of Directors will not present the additional amendment described below for stockholder approval at the meeting.

In summary, the proposed amendment provides that, with certain exceptions, the affirmative vote of the holders of 80% of the outstanding shares of all classes of stock of the Company entitled to vote generally in the election of directors shall be required to authorize:

(a) any merger or consolidation of the Company or any subsidiary with or into any other corporation,

(b) any sale, lease, exchange or other disposition by the Company or any subsidiary, including a distribution in partial or complete liquidation, of all or any substantial part of the assets of the Company or any subsidiary, to or with any corporation, person or other entity, or

(c) any issuance or transfer by the Company or any subsidiary of any securities of the Company or any subsidiary to any corporation, person or other entity in exchange for securities, cash or other property or a combination thereof,

if, in any such case, (i) the fair market value of the securities, cash or other property furnished by such other corporation, person or entity or the fair market value of the securities or assets received by such other corporation, person or entity exceeds $1,000,000 and (ii) such other corporation, person or entity is, or within the preceding 12 month period has been, the beneficial owner, directly or indirectly, of 5% or more of the outstanding capital stock of the Company entitled to vote generally in the election of directors.

The proposed 80% stockholder vote requirement would not apply (i) to any transaction described above if, prior to the consummation of such transaction, the Board of Directors of the Company adopts a resolution in favor of the transaction by the affirmative vote of at least two-thirds of the entire Board (or by unanimous written consent in lieu thereof), or (ii) to any such transaction with any entity a majority of the outstanding voting stock of which or other voting interest in which is beneficially owned by the

Company or any of its subsidiaries. In order to prevent circumvention of the foregoing provisions, proposed Article SIXTH would further provide that its provisions may be altered, amended, supplemented or repealed only by the affirmative vote of the holders of 80% of the outstanding shares of all classes of stock of the Company entitled to vote generally in the election of directors.

Delaware law requires, with certain exceptions, the favorable vote of a majority of the outstanding shares of common stock of the Company entitled to vote generally in the election of directors for the adoption of a merger or consolidation of the Company or for the sale, lease or exchange of all or substantially all of the assets of the Company. Delaware law does not require any stockholder vote in connection with the issuance or transfer of securities of the Company in exchange for assets, securities or cash (although present policy rules of the New York Stock Exchange would make stockholder approval a prerequisite to listing securities of the Company issued in a transaction resulting in a change of control of the Company and certain other stock issuances). Neither Delaware law nor current New York Stock Exchange policy requires any vote of the Company's stockholders in connection with the sale, lease or exchange of less than substantially all of the assets of the Company or in connection with the merger or consolidation of a subsidiary of the Company or the sale, lease or other disposition of all or substantially all of the assets of a subsidiary of the Company (unless the subsidiary's assets constitute all or substantially all of the Company's assets). The effect of the proposed amendment to the Company's Certificate of Incorporation (and of complementary amendments that would be made to the Certificates of Incorporation of its principal direct subsidiaries) would be to increase (or create) voting requirements in these instances. Such amendment to the Company's Certificate of Incorporation, if adopted, would be subject to amendment or rescission only by vote of the holders of 80% of the outstanding shares of stock of the Company entitled to vote generally in the election of directors, and such amendments to the subsidiaries' Certificates of Incorporation would be subject to amendment or rescission only if approved on behalf of the Company by vote of two-thirds of the entire Board of Directors of the Company.

The effect of the proposed amendments described above could be to discourage a tender offer or takeover bid by a corporation, person or entity intending to acquire control of the Company through the acquisition of a substantial number of shares of the Company's stock followed by a forced merger or similar transaction, regardless of whether such transaction might be in the best interests of the Company and its stockholders. The proposed amendment would make it more difficult to effect such a transaction and might therefore discourage an attempt to do so. The proposed amendment would help protect the Company's public stockholders against the danger of a disadvantageous transaction between the Company and a substantial holder of the Company's stock or its affiliates, but the Board recognizes that a conflict of interest between such a substantial holder and the public stockholders may not exist in all situations and that certain transactions which might be discouraged by the proposed amendment might be in the best interests of the Company and its stockholders.

The affirmative vote of the holders of a majority of the shares of the Company's common stock outstanding and entitled to vote generally in the election of directors is required for approval of the foregoing proposal.

The Board of Directors recommends a vote FOR the adoption of the amendment to the Certificate of Incorporation of the Company as described above and set forth in Exhibit B.

ITEM No. 4—ELECTION OF AUDITORS

Independent auditors of the Company will be elected at the meeting. The Board of Directors recommends a vote FOR the election of Arthur Andersen & Co., which firm has served as auditors of the Company since 1966. The affirmative vote of the holders of a majority of the shares of the Company's common stock represented at the meeting, in person or by proxy, is required for approval of this proposal. Representatives of Arthur Andersen & Co. are expected to be present at the meeting and will have an opportunity to make a statement if they desire to do so. Such representatives are expected to be available to respond to appropriate questions.

REMUNERATION OF OFFICERS AND DIRECTORS

Remuneration

The following table sets forth on an accrual basis for the year ended December 31, 1976, with respect to each director of the Company whose aggregate direct remuneration exceeded $40,000, each of the three highest paid officers of the Company and all directors and officers of the Company as a group, the annual fixed compensation received, incentive compensation received and estimated annual benefits payable upon retirement under the Company's retirement plans.

Name of Individual or Identity of Group	Capacities in which Remuneration was Received	Fixed Compensation	Incentive Compensation (1)	Estimated Annual Benefits Upon Retirement (2)
Colin M. Marshall	President and Chief Operating Officer (elected President and Chief Executive Officer effective January 1, 1977)	$110,000	$ 87,000	$ 82,097
James F. Calvano	Senior Vice President (elected Group Vice President effective January 1, 1977)	$ 80,000	$ 51,900	$ 50,206
John R. Marshall, Jr.	Senior Vice President	$ 80,000	$ 34,600	$ 25,752
Winston V. Morrow, Jr.	Chairman and Chief Executive Officer (resigned effective December 31, 1976)	$165,000(3)	$115,200	$ 71,316
Alva T. Bonda	Consultant; Director	$ 52,250(4)	—	—
All Directors and Officers as a Group		$1,133,300(5)(6)	$517,700(7)	$483,974(7)

(1) Incentive compensation applicable to the year ended December 31, 1976 was awarded by the Board of Directors pursuant to the Company's Senior Executive Incentive Cash Bonus Plan. For information regarding such Bonus Plan and grants made under the Company's Senior Executive Long-Term Incentive Plan, see "Incentive Compensation" below.

(2) The amounts shown are the benefits payable under the Company's non-contributory Retirement Plan for Salaried and Hourly Employees and, in the case of one officer, under the Company's contributory plan covering salaried employees of its United Kingdom subsidiary. Except with respect to Mr. Morrow, such amounts are based upon the assumption that each of such directors and officers will continue his employment until normal retirement age at his current rate of compensation. The amount set forth for Mr. Morrow is the actual annual benefit payable to him upon his reaching age 65.

(3) Excludes amounts paid and payable in settlement of Mr. Morrow's rights under his employment agreement with the Company. See "Employment Agreements" below. Mr. Morrow resigned as Chairman, Chief Executive Officer and a director of the Company effective December 31, 1976.

(4) Consists of $36,000 paid to Mr. Bonda pursuant to a consulting agreement with the Company (see "Certain Transactions—Directors' Affiliations") and $16,250 received by Mr. Bonda in directors' fees.

(5) Includes an aggregate of $156,900 paid to 10 directors (including Mr. Bonda) as fees for attending meetings of the Board of Directors and various committees of the Board.

(6) Group consists of 16 individuals.

(7) Group consists of 15 individuals.

Stock Options Granted to and Held by Officers and Directors

The following table shows with respect to each director of the Company whose aggregate direct remuneration exceeded $40,000, each of the three highest paid officers of the Company and all directors and officers of the Company as a group, information concerning options to purchase shares of the Company's common stock granted and exercised under the Company's Unqualified Stock Option Plan. All such options were granted subsequent to January 13, 1975, the effective date of such Plan. Of such options, options to purchase 17,831 shares of common stock are currently exercisable and (assuming continued employment of the optionees) options to purchase 85,339 shares of common stock will become exercisable in the years 1978 through 1981. In each case the option exercise price is not less than the market value of the Company's common stock on the date of grant. The closing price of the Company's common stock on the New York Stock Exchange on May 3, 1977 was $13.00 a share.

	Colin M. Marshall	James F. Calvano	John R. Marshall, Jr.	All Directors and Officers as a Group (12 persons)
Options Granted under Plan—January 1, 1976-May 3, 1977				
Number of shares	8,000	4,000	—	25,000
Average exercise price	$14.50	$14.50	—	$13.72
Options Exercised—January 1, 1976-May 3, 1977				
Number of shares	5,666	—	—	12,330
Aggregate exercise price of options exercised	$34,621	—	—	$75,438
Aggregate market value of shares on date options exercised	$73,658	—	—	$160,290
Options Unexercised at May 3, 1977				
Number of shares	19,334	14,000	12,000	103,170
Average exercise price	$9.58	$8.51	$6.15	$7.97

In addition, during the period January 1, 1976 through May 3, 1977, 149 employees of the Company, other than directors or officers, were granted options under the Company's Unqualified Stock Option Plan to purchase an aggregate of 77,000 shares of the Company's common stock at a weighted average option price of $11.97 per share, of which options to purchase 75,700 shares remained outstanding as of May 3, 1977. Options to purchase 152,033 shares of common stock, granted prior to January 1, 1976, remained outstanding as of May 3, 1977, of which options to purchase 39,266 shares were exercisable as of such date. None of the foregoing options had been exercised as of May 3, 1977.

Incentive Compensation

On October 28, 1975, the Board of Directors of the Company adopted the Senior Executive Incentive Cash Bonus Plan (the "Bonus Plan"), the adoption of which was ratified at the 1976 Annual Meeting of Stockholders. Bonus awards may only be made under the Bonus Plan for any fiscal year that "Consolidated Net Income" (defined for purposes of the Bonus Plan to mean, for each year, the amount reported as "Net Income Applicable to Common Shares" in the annual certified consolidated financial statements of the Company for such year) is equal to or greater than 5% of "Average Stockholders' Equity" (defined for purposes of the Bonus Plan to mean the average of the capital stock (excluding any preferred stock), capital surplus and retained earnings of the Company as of the end of such year and as of the end of the preceding year). In the event that such condition is met for any fiscal year, the maximum amount available for bonus awards under the Bonus Plan for such year is 7% of Consolidated Net Income for the year.

Twenty six present and former senior executives participated in the Bonus Plan for the year ended December 31, 1976. Under the formula set forth in the Bonus Plan, $1,142,000 was available for the payment of bonus awards and a total of $665,800 was paid to the participants in the Bonus Plan. See the table under "Remuneration."

On March 30, 1976, the Board of Directors of the Company adopted the Senior Executive Long-Term Incentive Plan (the "Long-Term Plan"), subject to approval by the stockholders, which approval was granted at the 1976 Annual Meeting of Stockholders. The Long-Term Plan provides for the establishment by the Board of Directors of a four-year "Plan Period" not more often than once every other year and the granting, to eligible employees selected by the Board of Directors, of contingent "Target Cash Awards" payable only at the expiration of the Plan Period for which the contingent award was granted. In connection with the granting of such Target Cash Awards, the Board of Directors is required to establish an "Earnings Base" for the Plan Period (in an amount not less than 90% of the Company's highest "Consolidated Net Income per Share", as defined, during the two fiscal years next preceding commencement of the Plan Period) and an "Earnings Objective" for the Plan Period (in an amount determined by the Board of Directors to be the appropriate target excess of (i) Consolidated Net Income per Share for the final fiscal year of the Plan Period over (ii) the Earnings Base).

Actual cash awards may only be paid under the Long-Term Plan with respect to any Plan Period if the actual excess of Consolidated Net Income per Share for the final year of such Plan Period over the

Earnings Base equals at least 50% of the Earnings Objective. In the event that such test is met for any Plan Period, each employee granted a Target Cash Award at the commencement of such Plan Period who remains an eligible employee at the termination of the Plan Period will receive a cash award equal to the amount obtained by multiplying such Target Cash Award by a fraction (i) the numerator of which is the amount by which the Consolidated Net Income per Share for the final year of the Plan Period exceeded the Earnings Base and (ii) the denominator of which is the Earnings Objective, provided that in no event may the actual cash award exceed 125% of the Target Cash Award.

On March 30, 1976, the Board of Directors established the year beginning January 1, 1976 as the year of commencement of the first Plan Period under the Long-Term Plan and selected 27 senior executives, including Messrs. Colin M. Marshall, James F. Calvano, John R. Marshall, Jr. and Winston V. Morrow, Jr., to participate in the Long-Term Plan for such Plan Period, of whom 25 senior executives remain eligible. The maximum amount payable under the Long-Term Plan with respect to the first Plan Period, should all present participants remain eligible, is $1,916,618, of which $342,151, $176,919 and $147,998 would be payable to Messrs. Colin M. Marshall, James F. Calvano and John R. Marshall, Jr., respectively. The grant made to Mr. Winston V. Morrow, Jr. lapsed upon his resignation.

Employment Agreements

Mr. Colin M. Marshall is employed by the Company under an agreement for the period January 1, 1976 through December 31, 1979, at a current annual salary of $150,000, exclusive of incentive compensation.

On December 21, 1976, the Company announced that the Board of Directors had accepted the resignation of Mr. Winston V. Morrow, Jr. as Chairman, Chief Executive Officer and a director, effective December 31, 1976. Mr. Morrow's employment agreement provided for his employment for the period from January 1, 1976 through December 31, 1979 at a minimum annual salary of $165,000, exclusive of incentive compensation. A settlement was negotiated under which the employment agreement was terminated and Mr. Morrow received, in addition to the fixed compensation and retirement benefits indicated under "Remuneration" above, an additional lump sum payment of $175,000, the right to receive payments on an annuity basis beginning January 1, 1980 equal to the proceeds of an annuity purchased by the Company at a cost of $320,000 and the right to receive a cash bonus under the Bonus Plan for the year ended December 31, 1976. As indicated under "Remuneration," such bonus was subsequently determined to be $115,200. Mr. Morrow agreed not to compete with the Company for a period of five years and to be available for consultation on request during 1977 for a *per diem* fee. Stock options granted under the Company's Unqualified Stock Option Plan and a grant under the Long-Term Plan held by Mr. Morrow lapsed upon termination of his employment.

During 1976, the Company entered into commitments with 29 officers and other key employees of the Company, other than Mr. Colin M. Marshall but including Messrs. James F. Calvano and John R. Marshall, Jr., pursuant to which the Company agreed that if any one person or affiliated group other than the Trustee should acquire more than 40% of the outstanding voting stock of the Company, the Company would agree to continue employing each such key employee for a period of one year from the date of such

event (subject to discharge for cause), and that any such employee terminated without cause during such period would be entitled to be paid not less than his salary through the date of termination plus one year's base salary at the rate then in effect and a bonus for the portion of the year prior to the date of termination.

Except as described above, the Company currently has no employment agreements in effect with any of its executive officers or directors.

CERTAIN TRANSACTIONS

Directors' Affiliations

During the period January 1, 1976 through April 22, 1976, Irving Trust Company, of which Mr. William W. Lyon, a director of the Company, is a Senior Vice President, was a 15% participant and the agent for the other lenders under the Company's Revolving Credit Agreement in the maximum amount of $180,000,000, as then in effect. On April 23, 1976, this Agreement was amended and extended in the same maximum amount through May 1979. Irving Trust Company is a 10% participant and is still the agent for the other lenders under the revised Agreement. During 1976, the Company paid to Irving Trust Company for its own account as interest and commitment fees under said Agreement the aggregate amount of $698,443. In addition, during 1976 the Company maintained unrestricted compensating balances with the lending banks, including Irving Trust Company, averaging 12.8% of the lenders' respective commitments. Prior to the amendment, the Company maintained small additional balances with Irving Trust Company for services rendered by it as agent under the Agreement in varying amounts and, in connection with such amendment, the Company agreed to pay Irving Trust Company, in lieu of maintaining such additional balances, an annual fee of $25,000 for services rendered by it as agent. Under the Agreement as amended, interest on the outstanding balance of loans is payable at a rate of ¼ of 1% above the prime rate of Irving Trust Company as from time to time in effect, unrestricted compensating balances equal to 10% of the total commitment generally will be maintained and, in lieu of additional compensating balances, the Company is required to pay a usage fee of ½ of 1% on the outstanding daily principal balance for all days on which the aggregate principal amount of loans outstanding is less than $120,000,000 and ¾ of 1% for all days on which the aggregate principal amount of loans outstanding equals or exceeds $120,000,000. The usage fee will increase by ¼ of 1% effective June 1, 1977. In addition, the Company will pay a commitment fee of ½ of 1% on the unused daily portion of the amount available for borrowing. The maximum amount available under the Agreement was reduced by the Company to $150,000,000 effective January 31, 1977.

Mr. Olcott D. Smith, a director of the Company, was a director and Chairman of the Executive Committee of Aetna Life and Casualty Company until April 29, 1977. Dr. Eli Shapiro, a director of the Company, is a director and Vice Chairman of The Travelers Corporation. Each of Aetna Life Insurance Company, a subsidiary of Aetna Life and Casualty Company, and The Travelers Insurance Company, a subsidiary of The Travelers Corporation, is the holder of 9% Senior Subordinated Notes of the Company in the principal amount of $6,000,000, which were purchased in May 1972, the date of the original issuance of the Notes. Each such holder was paid $540,000 in interest during 1976. On April 14, 1976, the agreements under which the Notes were issued were amended and restated, effective April 23, 1976, to

provide greater flexibility to the Company in its other financial arrangements. The Notes become due in quarterly principal installments of $675,000 commencing June 1, 1977, with the final payment due March 1, 1987.

Effective December 1, 1974, Mr. Alva T. Bonda was retained as a consultant to the Company, to be compensated at the rate of $3,000 per month plus reasonable expenses incurred in performance of his services, such compensation to be in addition to the fees paid to Mr. Bonda for services as a director of the Company. See "Remuneration."

Loans to Employees

In 1965, in connection with the acquisition of the Company by ITT, the Company adopted an Employees' Stock Plan pursuant to which 297 persons then employed by the Company purchased 211,305 shares of the Company's common stock. The purchases of substantially all of such shares were financed by loans from the Company which were secured by pledges of such shares. During 1967, ITT made an exchange offer, which was accepted by all of the employees of the Company who then owned shares of the Company's common stock acquired pursuant to such Employees' Stock Plan, to exchange such shares for shares of ITT common stock. The loans under the Employees' Stock Plan were repayable over a period of ten years, which period has been extended for an additional seven years, with a moratorium on repayments of principal otherwise due in 1975 for certain borrowers then employed or on paid retirement. At March 31, 1977, 36 present and 27 former employees of the Company were indebted to the Company in the aggregate amount of $299,844 for shares of ITT common stock, 19,925 of which shares were held by the Company as collateral for such indebtedness. Of such indebtedness, as of March 31, 1977, Mr. William C. McPike, Senior Vice President of the Company, owed $14,828, Mr. J. Raymond Stepnowski, Vice President of the Company, owed $25,470 and Mr. Winston V. Morrow, Jr., former Chairman and Chief Executive Officer of the Company, owed $90,367, and loans outstanding to all current officers and directors of the Company as a group aggregated $49,398. The largest amounts outstanding from Messrs. McPike, Stepnowski and Morrow at any time since January 1, 1976 were $16,223, $27,675 and $111,214, respectively. All loans under this Plan bear interest at the rate of 5% per year.

In August and September 1975, the Company made loans to Mr. David J. Longridge, Group Vice President of the Company, aggregating $39,000, bearing interest at an average rate of 5% per annum, to finance in part the purchase of a residence, which loans are currently outstanding and are repayable through 1990.

Audit Committee Investigation

On November 9, 1976, the Board of Directors of the Company announced the results of a four-month study of questionable payments conducted by the Audit Committee of the Board. That study was conducted between July and October 1976 by the Audit Committee, assisted by the Company's outside counsel and independent auditors, to determine the existence, extent and nature of any illegal or

questionable payments and unrecorded or incorrectly recorded transactions. The study encompassed the period January 1, 1972 through completion of the study.

In the course of the investigation, independent counsel distributed and received back written questionnaires, conducted interviews here and abroad and, in conjunction with the Company's auditors, reviewed hundreds of documents. The auditors also performed tests of disbursements in certain selected accounts.

The study showed that, during the period since January 1, 1972, the Company made improper, facilitating or otherwise questionable payments to consultants, local government officials and others, totalling approximately $425,000, including the estimated value of complimentary vehicle rentals. Of that amount, approximately $384,000 represented payments made abroad from funds generated in the operations of foreign subsidiaries.

The foreign payments included: (a) approximately $180,000 in miscellaneous payments in minor amounts to local officials in several countries for such purposes as obtaining the return of stolen or detained vehicles, expediting or by-passing vehicle inspections, expediting a routine tax audit, and facilitating or by-passing the issuance or renewal of operating permits; (b) approximately $65,000 as the estimated value of complimentary vehicle rentals to officials in several countries; (c) approximately $135,000 in unrecorded bonus payments to employees in certain foreign countries, for the purpose of avoiding local tax or other regulations; and (d) an unrecorded $4,000 cash payment to an attorney who was on retainer.

Of the $384,000, approximately $125,000 was paid from two "off-book" funds derived from insurance premium refunds payable to foreign subsidiaries and maintained in the names of officers of foreign subsidiaries, one of whom was also an officer of the Company, and into which an aggregate of $247,000 was deposited. The remaining payments were all recorded on the books of the foreign subsidiaries involved and all but approximately $45,000 were properly described.

All "off-book" funds, as well as the practice of making unrecorded bonus payments to employees of certain foreign subsidiaries, were ordered terminated at the direction of senior United States management prior to the commencement of the Audit Committee study. At the time these accounts were closed, the remaining balances were paid over to subsidiaries of the Company and recorded as income on their books.

The Audit Committee obtained legal advice indicating that the payments to local officials in connection with return of vehicles, the audit, vehicle inspections and/or operating permits were illegal in the countries where most of them were made, although a defense of extortion might be available in any prosecution of the Company or its employees, and that the bulk of the unrecorded bonus payments did not violate any criminal law, although they did violate certain civil tax provisions.

Of the $384,000 paid in all foreign countries during the period covered by the study, approximately $345,000 was paid in three countries which together accounted for sales of $22,043,000 in 1975 and $24,378,000 in 1976. The Company's total worldwide sales in those years were $392,841,000 and $432,963,000, respectively.

After receipt of the Audit Committee's report, the Board of Directors adopted an amended Policy Statement which provides that all payments of the type described above are prohibited except that, after prior approval at appropriate corporate levels, facilitating or similar payments may be made in minor amounts, only in foreign countries, where no competitive advantage is sought but where such payments are necessary to prevent disruption of Company business, harassment, detention or endangerment of customers or employees or loss or damage to or sequestration of Company property, and that occasional complimentary car rentals and nominal amenities may be given to local government officials only in foreign countries where such practice is commonplace, so long as there is no understanding that the Company will receive anything specific in return.

While the Policy Statement does not contain a specific limitation on the amount of any payment or the aggregate amounts of payments in any period or on the duration of complimentary rentals, the Company believes that the amount of future payments and the value of future complimentary rentals will not be significant. If any such payment or complimentary rental or the aggregate of such payments and complimentary rentals in any year should be material, the Company intends to make appropriate disclosure in its periodic reports to the Securities and Exchange Commission and its communications to stockholders.

The policy requires that all such payments and complimentary rentals be reflected accurately on the books of the Company. No such payment or rental will be deducted for income tax purposes unless such deduction is proper under applicable laws.

No payments of the kind described above are continuing, except as specifically permitted by the Policy Statement. The Company does not believe that cessation of any of these payments would have a material effect on the Company's overall income, earnings or assets, although continuation of minor facilitating or similar payments is believed to be necessary to avoid disruption of the Company's business and to avoid harassment of its customers or employees in certain areas abroad.

Payments within the United States, some of which were, and some of which may have been, illegal at the time they were made, totalled approximately $41,000. They included: (a) $20,000 as the estimated value of complimentary vehicle rentals to officials, miscellaneous small reward payments to police for recovering stolen vehicles and similar minor payments; (b) $6,700 in cash payments to a municipal official in 1971 through 1973 to reimburse him for the cost of a vehicle rented by him; (c) $10,800 in political contributions; and (d) an alleged unrecorded $4,000 paid in cash to an attorney retained by the Company.

One of the cash payments to the municipal official and the alleged $4,000 payment apparently came from "off-book" cash under the control of former officers of the Company, the source of which could not be determined. The bulk of the political contributions was paid and recorded as fees and expenses of a lobbyist retained by the Company and the remaining cash payments to the municipal official were generated from expense vouchers.

The Company believes that no domestic payments of any kind are continuing.

The study also disclosed that a $28,000 "off-book" cash fund, the source of which was one of the foreign "off-book" accounts, was established in the United States under the control of a former senior officer of the Company. The Audit Committee was unable to determine whether any portion of this fund was ever used, although one $800 political contribution may have come from this source. In any event, an amount substantially equal to the amount of the fund was paid over to a subsidiary in May 1975 and recorded as insurance refunds.

Several current and past members of senior United States management, including Mr. Colin M. Marshall, President and Chief Executive Officer of the Company and a nominee for election as a director, had knowledge of some of the foregoing payments but in most cases did not authorize or have specific knowledge of particular payments. During the years 1972 through 1975, Mr. Marshall was generally aware of the practices of rewarding police for returning stolen vehicles, of making minor facilitating payments of the nature described above to local officials in several foreign countries, of giving complimentary vehicle rentals to governmental officials in several foreign countries without expectation of specific benefit, and of making unrecorded bonus payments to employees of certain foreign subsidiaries. However, Mr. Marshall had no knowledge of any specific payments, or of the sources or forms of payments, involved in such practices. Beginning in 1972, Mr. Marshall knew of the existence of one foreign "off-book" fund and of the $28,000 domestic "off-book" fund referred to above, but had no knowledge of any payments made from such funds, with the exception of one $200 payment received by Mr. Marshall in 1972 as reimbursement for the cost of tickets to a domestic political dinner, which reimbursement may have come from such domestic fund. When Mr. Marshall learned of the existence of the other foreign "off-book" fund in March 1976, he immediately ordered it closed and the balance therein recorded on the Company's books. Mr. Marshall had no knowledge of any other domestic or foreign payments described above. Mr. Marshall is the only member of management nominated for election as a director at the Annual Meeting of Stockholders. The Committee found that no outside director knew of any of the payments or arrangements described above prior to April 1976.

The Company's independent auditors did not know of the existence of any "off-book" funds prior to April 1976.

None of the payments referred to above created any material exposure for tax liabilities. The payments have been reported to the Internal Revenue Service and additional United States tax payments in immaterial amounts have been or may be conceded during routine income tax examinations. The Company does not anticipate the filing of amended returns and has no knowledge of any investigations of these matters by tax authorities in foreign countries or domestic authorities other than the Internal Revenue Service.

Following completion of its investigation, the Audit Committee considered the involvement of corporate employees in these matters and, based upon the Committee's conclusions, the Board of Directors took appropriate action with respect to several employees. In the view of the Board, no further personnel action is warranted as a result of the Audit Committee's findings.

In addition to the payments totalling approximately $425,000 described above, a payment of $470,958 made in February 1975 was carefully examined by the Audit Committee because of its size and the manner of payment. The payment was made to a Channel Islands company, pursuant to its written invoice, by a Delaware subsidiary of the Company. Although there was no contract with the Channel Islands company, the payment was made to it at the request of a tax advisor in satisfaction of the Company's obligation to compensate him for extensive services rendered over a period of more than five years in connection with settlement of income tax liability for a six year period of an operating subsidiary of the Company in a foreign country other than the Channel Islands. The fee arrangements were made, and the tax settlement was supervised, by a former senior executive of the Company located at the Company's division headquarters, although Mr. Colin M. Marshall, as well as several other former and present officers of the Company, had knowledge of the negotiations for the settlement of the tax liability and of the fee arrangements with the advisor. Management of the operating subsidiary involved took no part in, and were unaware of, the fee arrangements or the method of payment involving the Channel Islands company. Management of the operating subsidiary received and paid an invoice from the tax advisor in the amount of approximately $1,600 for his services in connection with the tax settlement.

The payment to the Channel Islands company was made only after the Company's outside auditors verified for the Company that the advisor was a professionally qualified individual of excellent reputation in the country where the operating subsidiary is located, that a fee arrangement of the type entered into by the Company was not unusual in the country involved, that the amount of the fee was properly computed under the arrangement and that the documentation received by the Company constituted official notification by the tax authority of a binding settlement of tax liability for the six year period. The amount and purpose of the payment were reported to the Audit Committee and the Board of Directors promptly after the payment was made.

The further examination during the Audit Committee's special study included extensive interviews with Company personnel and others, inquiries through banking sources and a detailed review of the nature of the fee arrangement, the nature and extent of the services rendered and the benefits received by the Company. The Audit Committee and its counsel and auditors made efforts to ascertain whether any portion of the payment was used or was intended to be used for payment to any government official or other person for purposes of influencing official action or was paid to or retained by any person associated with the Company. The Committee was unable to find any evidence of such use, intended use, payment or retention, although it was not possible to trace the payment to an ultimate recipient. When interviewed on behalf of the Committee as to whether any part of the payment was paid over to third parties, the tax advisor denied that he had made any improper payment and disclaimed any connection with the Channel Islands company or any awareness of the payment made to it. The Committee concluded that, in view of the extent and nature of the services rendered and all other circumstances, the denial of knowledge of the Channel Islands company or the payment made to it was not credible. The former and present senior officers of the Company who approved the payment at the time it was made, including Mr. Colin M. Marshall, knew or should have known that payment effected in such fashion may have involved violation by the recipient of tax or currency regulations.

The Company has been advised by counsel that payment of the fee in the manner described did not subject the Company or any subsidiary to liability.

A summary of the findings of the Audit Committee's special study was revealed to the staff of the Securities and Exchange Commission by the Company on December 9, 1976, and included in the portion of outside counsel's confidential report to the Audit Committee delivered to the Commission staff on January 12, 1977.

ITT Divestiture Agreement

By agreement dated May 15, 1972 (the "Divestiture Agreement"), the Company agreed to prepare and file such registration statements and related prospectuses and supplements or amendments thereto as ITT may request in connection with offerings in the course of ITT's divestiture of the common stock of the Company owned by ITT, and ITT agreed to pay all of the Company's out-of-pocket expenses in connection with such offerings. Under the Divestiture Agreement, ITT agreed to indemnify and hold harmless the Company and its directors and officers against any loss or liability which any of them may incur, under the Securities Act of 1933 or otherwise, based upon any alleged untrue statement of a material fact or alleged omission to state a material fact, except statements or omissions resulting from the willful misconduct or negligence of any officer, director or other executive of the Company and statements in or omissions from information furnished in writing to the Company by or on behalf of any underwriter, in any registration statement covering shares to be offered as part of the divestiture by ITT which is filed prior to the reduction of ITT's holdings of the Company's common stock to less than 50% of such shares outstanding. As indicated above under "Principal Stockholder", the Trustee sold 1,250,000 shares of the Company's common stock in a public offering pursuant to Court order on May 27, 1976. The offering was subject to the above-described provisions of the Divestiture Agreement. In connection with any registration statement covering shares to be offered in the divestiture filed after the reduction of ITT's holdings of the Company's common stock to less than 50% of the shares outstanding, the Company agreed to indemnify and hold harmless ITT, its officers and directors against all loss or liability which any of them may incur under the Securities Act of 1933 or otherwise, based upon any alleged untrue statement of a material fact or alleged omission to state a material fact in such registration statement, except statements in or omissions from information furnished in writing to the Company by or on behalf of any underwriter or by or on behalf of ITT expressly for use in such registration statement or prospectus. The Trustee's initial sale of common stock in May 1976 had the effect of reducing ITT's former holdings of the Company's common stock to less than 50% of the shares outstanding for purposes of the Divestiture Agreement. In addition, the Company agreed, if requested, to indemnify the underwriters against certain liabilities in connection with public offerings in the course of ITT's divestiture.

ITT Incentive Plan

In 1972, ITT developed an Incentive Plan pursuant to which it agreed to create an irrevocable trust to grant options to certain key executive employees of the Company to purchase up to 180,000 shares of the Company's common stock then owned by ITT. Under the terms of the Incentive Plan as originally

adopted, options granted thereunder were to be exercisable at a price of $9.65 a share, subject to certain adjustments, the actual number of shares of the Company's common stock purchasable pursuant to options granted thereunder being dependent upon the aggregate gross selling price ultimately realized upon sale of the shares of the Company's common stock owned by ITT in June 1972. Options would have become exercisable in stages over the first two years after completion of such sales, and would have expired 10 years after completion of such sales. Under the formula used in the original Incentive Plan, if the 3,100,000 shares transferred initially by ITT to the Trustee in January 1975 were sold at an aggregate price of between $16,300,000 and $61,300,000 (approximately $5.25 to $19.75 a share), 36,000 shares of the Company's common stock would have been purchasable under the Incentive Plan.

Pursuant to the consent decree described under "Principal Stockholder," a copy of the Incentive Plan in its original form was submitted to the United States Department of Justice for its review and comment. The Department of Justice subsequently advised that it objected to certain features of the Incentive Plan as submitted. After reviewing the matter with the Company and the Trustee, ITT has proposed to revise the Incentive Plan in various respects. Under the revised Incentive Plan, the option price would remain $9.65 a share, subject to certain adjustments, and the number of shares subject to options granted under the Incentive Plan would be fixed at 36,000 shares. Options would be fully exercisable beginning on the date of grant and would terminate, to the extent not theretofore exercised by the optionee, on June 30, 1981. Any shares as to which options remained unexercised on June 30, 1981 would be required to be sold by the trustee of the Incentive Plan trust or his successor. As under the original Plan, the net proceeds of option exercises and of any such sales of shares in lieu of option exercises would be remitted to ITT. Any dividends on shares held in the trust established under the Incentive Plan would be used to defray expenses of administration of the Incentive Plan, with any excess dividends being remitted to the Company.

At the time the Incentive Plan is implemented, ITT would enter into an agreement with the Company pursuant to which the Company would agree to prepare and file a registration statement under the Securities Act of 1933, as amended, covering the grant and exercise of options under the Incentive Plan and the resale by optionees and the trustee under the Incentive Plan of shares subject to options, ITT would agree to pay the Company's incremental out-of-pocket expenses of preparing, filing and distributing such registration statement and any amendments or supplements thereto and of qualifying the sale of shares under state securities laws, subject to certain limitations, and the Company would agree to indemnify ITT against certain liabilities under the Securities Act of 1933 in connection with such registration.

If the revised Plan is implemented, Messrs. Colin M. Marshall, James F. Calvano and John R. Marshall, Jr. would receive options to purchase approximately 3,600 shares, 2,200 shares and 1,400 shares, respectively, of the Company's common stock formerly held by ITT. Implementation of the revised plan is subject to approval by the Court administering the ITT consent decree (see "Principal Stockholder").

Miscellaneous

ITT and its subsidiaries are customers of the Company's vehicle rental and leasing business. Lease payments are currently estimated to be at the rate of approximately $915,000 per annum. Because daily vehicle rentals are customarily billed to individual rather than corporate accounts, the amount of such billings cannot be determined accurately but is believed to be substantial, with ITT being one of the Company's largest customers. In addition, the Company has been a party to certain other agreements and arrangements with ITT and its subsidiaries since the beginning of 1976, including miscellaneous contracts between the Company and certain hotels owned, operated or licensed by ITT Sheraton Corporation of America, providing for the lease of premises to the Company for the operation by the Company of rent a car concessions at such hotels, under which contracts the Company paid aggregate annual fees or rentals of $58,196 in 1976, and arrangements with ITT World Communications Inc. for the use of communications facilities, under which the Company paid $106,116 in 1976.

OTHER MATTERS

Management knows of no business to come before the meeting other than as set forth in Items Nos. 1, 2, 3 and 4 of the attached Notice of Annual Meeting of Stockholders. Should any other matters requiring a vote of stockholders arise, the persons designated as proxies will vote thereon in accordance with their judgment.

By Order of the Board of Directors,

DAVID I. SCHÄFFER
Secretary

Garden City, New York
May 4, 1977

EXHIBIT A

AMENDMENTS TO THE BY-LAWS TO PROVIDE FOR CLASSIFICATION OF DIRECTORS, REMOVAL OF DIRECTORS ONLY FOR CAUSE AND A MAJORITY QUORUM REQUIREMENT FOR DIRECTORS; AND AMENDMENT TO THE CERTIFICATE OF INCORPORATION TO RESTRICT THE POWER TO AMEND SUCH BY-LAWS

Text of Proposed New Section 3.2 of Article 3 of the By-laws of the Company:

"3.2 *Number; Qualification; Term of Office.* The number of directors constituting the entire Board of Directors shall not be less than nine nor more than 15, the exact number of directors to be fixed from time to time only by the vote of a majority of the entire Board. No decrease in the number of directors shall shorten the term of any incumbent director. Directors need not be stockholders.

"The directors shall be divided into three classes: Class I, Class II and Class III. Such classes shall be as nearly equal in number as possible. The term of office of the initial Class I directors shall expire at the annual meeting of stockholders in 1978; the term of office of the initial Class II directors shall expire at the annual meeting of stockholders in 1979; and the term of office of the initial Class III directors shall expire at the annual meeting of stockholders in 1980; or in each case thereafter when their respective successors are elected and have qualified or upon their earlier death, resignation or removal. At each annual election held after classification and the initial election of directors according to classes, the directors chosen to succeed those whose terms then expire shall be identified as being of the same class as the directors they succeed and shall be elected for a term expiring at the third succeeding annual meeting of stockholders or in each case thereafter when their respective successors are elected and have qualified or upon their earlier death, resignation or removal. If the number of directors is changed, any increase or decrease in directors shall be apportioned among the classes so as to maintain all classes as nearly equal in number as possible and any individual director elected to any class shall hold office for a term which shall coincide with the term of such class.

"Notwithstanding the foregoing, whenever the holders of any preferred stock issued by the Corporation shall have the right, voting as a class or otherwise, to elect directors at the annual meeting of stockholders, the then authorized number of directors of the Corporation shall be increased by the number of the additional directors so to be elected, and at such meeting the holders of such preferred stock shall be entitled, as a class or otherwise, to elect such additional directors. Any directors so elected shall hold office until the next annual meeting of stockholders or until their rights to hold such office terminate pursuant to the provisions of such preferred stock, whichever is earlier. The provisions of this paragraph shall apply notwithstanding the maximum number of directors hereinabove set forth."

Text of Proposed New Section 3.4 of Article 3 of the By-laws of the Company:

"3.4 *Newly Created Directorships and Vacancies.* Unless otherwise provided in the Certificate of Incorporation, newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board for any reason may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, at any meeting of the Board. A director elected to fill a vacancy shall be elected to hold office until the expiration of the term of the class to which he has been elected and until his successor shall be duly elected or qualified or until his earlier death, resignation or removal."

Text of Proposed New Section 3.6 of Article 3 of the By-laws of the Company:

"3.6 *Removal of Directors.* Any or all of the directors may be removed only for cause, by vote of the stockholders or by action of the Board."

Text of Proposed New Section 3.15 of Article 3 of the By-laws of the Company:

"3.15 *Quorum of Directors.* A majority of the entire Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business at any meeting of the Board."

Text of Proposed New Article 13 of the By-laws of the Company:

"ARTICLE 13

AMENDMENTS

Except to the extent otherwise provided in the Certificate of Incorporation, the By-laws may be altered, amended, supplemented or repealed, or new By-laws may be adopted, by vote of a majority of the votes cast by holders of shares entitled to vote in the election of directors at a meeting at which a quorum is present, or by the Board (provided that the vote of a majority of the entire Board shall be required to change the number of authorized directors). Any By-laws adopted, altered, amended, supplemented or repealed by the Board may be altered, amended, supplemented, repealed or readopted by the stockholders."

Text of Proposed New Article FIFTH of the Certificate of Incorporation of the Company:

"FIFTH: Members of the Board of Directors may be elected either by written ballot or by voice vote. The Board of Directors may from time to time adopt, alter, amend, supplement or repeal the By-laws of the Corporation, provided that any By-laws adopted, altered, amended, supplemented or repealed by the Board of Directors may be repealed, altered, amended, supplemented or readopted by the stockholders of the Corporation, and provided further that Sections 3.2, 3.4, 3.6 and 3.15 of Article 3 and Article 13 of the

By-laws shall not be altered, amended, supplemented or repealed, and no provisions of the By-laws or of this Certificate of Incorporation inconsistent with such By-law provisions shall be adopted, except by the affirmative vote of the holders of at least 80% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as one class. This Article FIFTH shall not be altered, amended, supplemented or repealed, and no provision of this Certificate of Incorporation inconsistent herewith shall be adopted, except by the affirmative vote of the holders of at least 80% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as one class."

EXHIBIT B

AMENDMENT TO THE CERTIFICATE OF INCORPORATION TO REQUIRE A SPECIAL DIRECTOR OR STOCKHOLDER VOTE FOR CERTAIN MERGERS, CONSOLIDATIONS AND SIMILAR TRANSACTIONS AND FOR ANY ALTERATION OR REPEAL OF SUCH PROVISIONS

Text of Proposed New Article SIXTH of the Certificate of Incorporation of the Company:

"SIXTH: (A) Except as otherwise expressly provided in Paragraph B of this Article SIXTH:

(1) any merger or consolidation of the Corporation or any subsidiary of the Corporation with or into any other corporation;

(2) any sale, lease, exchange or other disposition by the Corporation or any subsidiary of the Corporation, whether or not in partial or complete liquidation, of all or any substantial part of the assets of the Corporation or any subsidiary of the Corporation to or with any other person; or

(3) any issuance or transfer by the Corporation or any subsidiary of the Corporation of any securities of the Corporation or of any subsidiary of the Corporation to any other person in exchange for securities, cash or other property or a combination thereof;

shall require the affirmative vote of the holders of at least 80% of the outstanding shares of all classes of capital stock of the Corporation entitled to vote generally in the election of directors, considered for such purpose as one class, if, in any such case, (i) the fair market value of (a) the securities, cash or other property issued, paid or distributed by such person to the Corporation, its subsidiary or the stockholders of either of them in consideration of such transaction, or (b) the securities or assets issued, sold, leased, exchanged or disposed of by the Corporation or its subsidiary to or with such person as a result of such transaction, exceeds $1,000,000, and (ii) as of the record date for the determination of stockholders entitled (by reason of this Article SIXTH or otherwise) to notice thereof and to vote thereon, or at any time within the 12-month period next preceding such record date, such person is or was the beneficial owner, directly or indirectly, of 5% or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as one class.

"(B) The provisions of this Article SIXTH shall not apply to any transaction described in clause (1), (2) or (3) of Paragraph A of this Article SIXTH if (i) prior to the consummation of any such transaction, the Board of Directors of the Corporation shall have adopted a resolution, by the affirmative vote of two-thirds of the entire Board of Directors at a meeting duly called and held or by unanimous written consent in lieu of a meeting, approving the agreement pursuant to which such transaction shall thereafter be consummated or a memorandum of understanding with respect to the terms upon which such transaction shall thereafter be consummated or (ii) the Corporation or a subsidiary of the Corporation is, at the time such transaction is consummated, the beneficial owner of (a) a majority, by vote, of the outstanding shares of all classes of capital stock entitled to vote generally in elections of directors of the other corporation, or (b) a majority, by vote, of the voting interest in the other entity, with which such transaction is to be consummated.

"(C) For purposes of this Article SIXTH:

(1) any specified person shall be deemed to be the 'beneficial owner' or to 'beneficially own' any securities (i) as to which such person or any affiliate or associate of such person has the right, alone or with others, to direct the manner of exercise of the voting rights of such securities, whether or not such person or any affiliate or associate of such person has any interest in any income or distribution with respect to such securities, or (ii) which such specified person or any of its affiliates or associates has the right to acquire pursuant to any agreement, upon exercise of conversion rights, warrants or options, or otherwise, or (iii) which are beneficially owned, within the meaning of clause (i) or (ii) hereof, by any other person with which such specified person or any of its affiliates or associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of such securities;

(2) a 'person' is any individual, corporation, partnership, limited partnership, joint venture, sole proprietorship or other legal entity;

(3) an 'affiliate' of a specified person is any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person;

(4) an 'associate' of a specified person is (i) any person of which such specified person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (ii) any person that bears to the specified person the relationship described in clause (i), (iii) any trust or other estate in which such specified person has a substantial beneficial interest or as to which such specified person serves as a trustee or in a similar fiduciary capacity, (iv) any relative or spouse of a specified person, or any relative of such spouse, who has the same home as such specified person or who is a director or officer of such specified person or any corporation which controls or is controlled by such specified person, or (v) any other member or partner in a partnership, limited partnership, syndicate or other group of which the specified person is a member or partner and which is acting together for the purpose of acquiring, holding or disposing of any interest in the Corporation or a subsidiary of the Corporation;

(5) a 'subsidiary' of a specified person is (i) any corporation a majority, by vote, of the outstanding shares of all classes of capital stock of which entitled to vote generally in the election of directors, considered for this purpose as one class, or (ii) any other person a majority, by vote, of the voting interest of which, is beneficially owned, directly or indirectly, by such specified person;

(6) a 'direct subsidiary' of a specified person is a subsidiary of such person some or all of the stock of which entitled to vote generally in the election of directors (in the case of a corporation) or other voting interest of which (in the case of any other person) is beneficially owned directly by such person;

(7) a 'substantial part' of the assets of the Corporation or a subsidiary of the Corporation shall be deemed to be involved in a transaction described in clause (2) of Paragraph A of this Article SIXTH if the assets involved in such transaction have a fair market value on the date of such transaction equal to or greater than 25% of the total assets of the Corporation or such subsidiary (as the case may be) as reflected in the most recent audited consolidated balance sheet of the Corporation prior to the date of such transaction.

"(D) The Board of Directors of the Corporation shall have the power and duty to determine for the purposes of this Article SIXTH, on the basis of information then known to it, (i) whether any person is or was, at any relevant time, the beneficial owner, directly or indirectly, of 5% or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors or an 'affiliate' or an 'associate', as defined above, of any person (including, without limitation, whether any person 'controls' or is 'controlled by' or under 'common control with' any other person for the purposes of such definitions), and (ii) whether any consideration to be received or any securities or assets to be transferred have a fair market value exceeding $1,000,000. Any such determination by the Board shall be conclusive and binding for all purposes of this Article SIXTH.

"(E) The Corporation shall not take any action (i) to alter, amend, supplement or repeal any provision of the certificate of incorporation or other constituent instrument of any direct subsidiary of the Corporation that may be adopted requiring stockholder approval of any transaction involving such direct subsidiary described in clause (1), (2) or (3) of Paragraph A of this Article SIXTH or (ii) to adopt any provision of the certificate of incorporation or other constituent instrument of any direct subsidiary of the Corporation that is inconsistent with any provision thereof described in clause (i), except by the affirmative vote of two-thirds of the entire Board of Directors of the Corporation at a meeting duly called and held or by unanimous written consent in lieu of a meeting.

"(F) This Article SIXTH shall not be altered, amended, supplemented or repealed, and no provision of this Certificate of Incorporation inconsistent herewith shall be adopted, except by the affirmative vote of the holders of at least 80% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as one class."

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6/1/77
PAUL, WEISS, RIFKIND, WHARTON & GARRISON 197

By J Young

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This 1ST day of June 1977
Whiteman & Ransom
~~Attys. for~~ by K. Marte